A HAND-BOOK

OF

The Law

OF

BILLS OF SALE,

BY

G. E. LYON.

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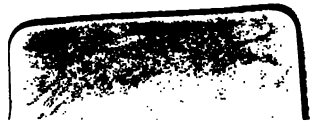

A HAND-BOOK

OF

THE LAW

OF

BILLS OF SALE,

WITH

AN APPENDIX

OF

Precedents and Statutes.

BY

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PREFACE.

THE aim and scope of this work will sufficiently appear from the title. It is not designed to enter into rivalry with the larger works on the same subject, which are already on the shelves of the profession, but to furnish a concise and readable statement of the law affecting a form of security of daily increasing popularity and importance.

Although no pretension is made to citing all the reported cases, the author believes that every important doctrine and principle affecting bills of sale will be found stated and supported by authority.

5, *Essex Court, Temple,*
April, 1873.

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THE LAW OF BILLS OF SALE.

THE LAW

OF

BILLS OF SALE.

CHAPTER I.

What is a bill of sale within the Bills of Sale Acts.

The popular idea of a bill of sale is that it is a mortgage of personal chattels.

This definition is only partially correct, for a bill of sale is a deed or instrument of assignment by which personal chattels are transferred from one person to another without actual delivery. In the latter respect it differs from a transfer by delivery in which no writing is necessary—but delivery to, and possession of, the goods by the person to whom they are transferred, are essential. Thus, if I say to A.B. "I give, sell, or pledge, this chair to you," and hand it over to him, and he takes possession of it, nothing further is needed to complete his title to it; but if I give the chair and retain possession of it, it becomes necessary that I execute and deliver to A.B. a valid written assignment, or in other words a bill of sale of it, and in that case, the delivery of the writing is equivalent to the delivery of the chattel.

The assignment or bill of sale may be either absolute or conditional. When it is absolute, the vendor conveys his entire property in the goods to the purchaser. When it is conditional, or by way of mortgage, the conveyance is made subject to a right in the conveying party to demand the re-assignment of the goods, upon payment of the money advanced upon them. If the money be not paid according to the condition, the property remains absolutely in the mortgagee. It is advisable in all cases that a bill of sale, whether absolute or conditional, should be made by deed. A deed possesses great advantages. It implies that there was a consideration for the transaction, and stops any inquiry on that point; and it also prevents the grantor giving any evidence to contradict or explain any statements or matters appearing on the face of the deed, except upon the ground of fraud, duress, or illegality. Nevertheless, a bill of sale need not necessarily be by deed, but will be sufficient if it clearly show that it was intended to operate as an assignment (*Thompson* v. *Pettit*, 16 L.J., Q.B. 162; *Flory* v. *Denny*, 21 L.J., Ex. 223); yet this remark only applies to bills of sale for which there is a valuable consideration, and if the bill of sale be a mere voluntary gift of goods (without actual delivery of them) it must be by deed, otherwise it is imperfect and inoperative, and will pass no property in the goods to the person in whose favour it is made, although such person may be a wife or child of the donor.

It is seldom that a bill of sale is requisite, except the transaction is in its whole or partial effect a mortgage, or is a gift with deferred possession, such as a voluntary settlement by a father of his furniture, &c., upon his children or others, reserving to himself the use of the goods settled, for his life. For, where a *bonâ fide* sale has taken place for valuable considera-

tion, and possession has been taken of the chattels by the purchaser, there is no necessity for a written assignment. The most that is required is a properly stamped receipt.

The Bills of Sale Act, 1854 (17 & 18 Vict., c. 36), which (with 29 & 30 Vict., c. 96), now regulates bills of sale, whether absolute or conditional, and provides for the adoption of certain formalities, (which will be hereafter noticed,) in order to perfect the title of the holders of such instruments, contains a definition of the term bill of sale, and enacts (sec. 7) that "The expression 'bill of sale' *shall* include bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels [and growing crops, *Sheridan* v. *Macartney*, 5 L.T., N.S., 27], and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, but *shall not* include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same; marriage settlements; transfers or assignments of any ship or vessel, or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; bills of sale of goods in foreign parts [*e.g.*, in Ireland or Scotland, *Coote* v. *Jecks*, 41 L.J., Ch. 599] or at sea; bills of lading; India warrants; warehouse keepers' certificates; warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing, or purporting to authorize, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented."

A number of judicial decisions have been given upon the construction of the various terms employed in the above definition, which are important to be

borne in mind. Thus, it was considered that a bill of sale within the Act must be an instrument by which the property in personal chattels is transferred from one person to another; and accordingly, it was decided that, where the trustees of a marriage settlement bought the husband's household furniture, and took his receipt referring to an inventory of the goods, and the husband and wife continued to have the joint use of the furniture, the receipt was not a bill of sale requiring to be perfected by registration. (*Allsop* v. *Day*, 31 L.J., Ex. 105; and see *Byerley* v. *Prevost*, L.R. 6 C.P. 144.) But an instrument, however informal, which is in effect a bill of sale, would come within the Act, and it has been held in a recent case that a memorandum of sale of goods and receipt, with a power of removal of the goods at the convenience of the mortgagee, was a bill of sale (*Ex parte Stooke, Re Bampfield*, 20 W.R. 925.) So a formal instrument, which is a mere colourable bill of sale, and an attempt to evade in form the appearance of being such, is within the Act; so that where an instrument *reciting a sale* of certain chattels by A. to B., and payment for the same, purported to be a demise of the chattels by B. to A., at a certain rent, payable quarterly, with a proviso entitling B. to enter and take possession if the rent should be unpaid for ten days after any of the quarterly days of payment, or if execution should issue against the goods of A.; it was held that this instrument required registration. (*Phillips* v. *Gibbons*, 5 W.R. 527.)

On the other hand, the words "and other assurances of personal chattels" must be construed as applying only to assurances of a like nature with those which precede; so that where, by a building contract, after providing for the erection of houses and the granting of leases thereof to the builder as they should be

finished, and for advances to be made by A., the owner of the land, to B., the builder, to carry on the work, it was agreed that, "all materials which should have been brought upon the premises by B. for the purpose of erecting such buildings, should be considered as immediately attached to and belonging to the premises; and further, that in case B., his executors, &c., should fail to proceed with the erection and completion of the houses, or any of them, within the times specified, it should be lawful for A., his heirs, &c., to enter upon and take possession of the whole, or any part of the land, not leased, with all buildings and improvements thereon, *and all bricks and other building materials thereon,* for his and their own absolute use and benefit"; it was held not to be either "an assignment, transfer or other assurance of personal chattels," or "a licence to take possession of personal chattels as security for a debt" within the Act. (*Brown* v. *Bateman*, L.R., 2 C.P. 272.)

The Act does not apply to ordinary mercantile transactions, so as to bring a transaction of advance and hypothecation within the meaning of a bill of sale. And where a customer of a bank obtained a loan on the security of certain wools, giving a letter of hypothecation, it was held not to be a security within the Act. (*Ex parte North-Western Bank, Re Slee*, 42 L.J., Bkcy. 6.)

CHAPTER II.

What personal chattels may be the subject matter of bills of sale.

All personal chattels (that is, goods and moveables) that belong to a man absolutely, he may grant, sell or mortgage. The Bills of Sale Acts, as we have before observed, have made it necessary for the holders of bills of sale of personal chattels, in order to make their instruments of assurance effectual, to have them registered in the manner pointed out in Chapter VI. It is, therefore, proposed to consider in the present chapter what are "personal chattels," which, when made the subject of a bill of sale, require the formalities of those Acts to be complied with. The interpretation clause (sec. 7) of the Act of 1854 enacts that "the expression 'personal chattels' *shall* mean goods, furniture, fixtures, and other articles capable of complete transfer by delivery, and *shall not* include chattel interests in real estate, nor shares or interests in the stock, funds, or securities of any government or in the capital or property of any incorporated or joint stock company, nor choses in action, nor any stock or produce upon any farm or lands, which, by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale."

The expression "other articles capable of complete transfer by delivery" is not to be regarded as limited

to personal chattels which are in the actual ownership of the conveying party at the date of the instrument of assignment. A man may convey, either absolutely or conditionally, personal property not yet in existence, provided he have a potential ownership, or the foundation of future interest in it; that is, provided he have the actual ownership of the property out of which the property assigned may arise. Therefore, a man possessed of sheep may, by bill of sale, grant the wool that shall grow upon those sheep in a certain year, or for a given number of years; and one possessed of land may, in like manner, grant the fruits which shall arise upon it, and the wool and the fruit will respectively pass to the grantee as soon as they come into existence.

An incomplete chattel may also be the subject of a security comprising a contract to complete it, and assigning the materials appropriated for its completion, and the chattel when finished; and by such a contract the entire chattel and all things prepared for, though not actually attached thereto, will be bound and will vest in the assignee (*Reid* v. *Fairbanks*, 1 Com. L. Rep. 787); and an assignment of all the furniture in a house, and comprised in a schedule annexed, will pass goods already purchased and inserted in the schedule *before*, but not placed upon the premises until *after* the execution of the assignment. (*Sutton* v. *Bath*, 1 Fos. & Fin. 152.)

"It is in common learning in the law," says an old author, "that a man cannot grant or charge that which he hath not;" and a deed which professes to convey property not in existence at the time, or not belonging to the grantor, either actually or potentially, is void *in law*, unless the grantor, by some new act done after he acquires the property, ratify the grant (*Lunn* v. *Thornton*, 14 L.J., C.P. 161.) So that, a

man cannot grant the wool that shall grow upon his sheep that he shall buy hereafter, for there he hath it not, either actually or potentially. And so, where shipowners assigned all the freight, earnings, and profits, or sums of money then due, or thereafter to become due, on account of one of their ships which afterwards went to the South Seas and procured a quantity of oil, it was held that the oil did not pass by the assignment. (*Robinson* v. *Macdonnel*, 5 M. & S. 228.)

But, though the legal property in after acquired goods will not pass, the deed may be so framed as, at law, to give the grantee a power to seize the goods, as they shall be acquired by the grantor and brought upon the premises. And this power will apparently operate by way of licence. (Per Tindal, C.J., in *Lunn* v. *Thornton*, supra; *Mercer* v. *Peterson*, L.R., 2 Ex. 304, 310.)

It seems that the licence to seize after acquired property is revocable at any time until acted upon; and the fact that the licence is under seal or for valuable consideration makes no difference. As to property not seized under it, the licence will be treated as revoked by a subsequent assignment for the benefit of creditors, though such assignment may itself be invalid as against trustees in bankruptcy. (*Carr* v. *Acraman*, 25 L.J., Ex. 90.)

The intention to include after acquired chattels under a licence to seize in a bill of sale, should appear by clear demonstration, and will not, as it seems, be inferred from doubtful expressions. So that, where a bill of sale, by way of mortgage, assigned all the furniture and effects "in, upon, about, or belonging to" a particular house, and contained a proviso that, after default made in payment of the sum thereby secured, it should be lawful for the mortgagees to

enter the said house and "to take, possess, and enjoy all and every the goods, chattels, effects and premises to their own use and benefit," it was held not to justify a seizure of goods not in the house at the time of the execution of the bill of sale. (*Tapfield* v. *Hillman*, 12 L.J., C.P. 311.) But an instrument, though plainly intended to take effect as a present assignment of after acquired chattels, and invalid as such, may, if it contain apt words, be treated as a licence or power to take possession of the after acquired property; and a security was so construed which, provided that after acquired property should belong to the creditor, and be considered to be included in the assignment as fully as if it were the property of the debtor, and included in the deed, so that the security might at all times be of adequate value. (*Hope* v. *Hayley*, 25 L.J., Q.B. 155.) Coleridge, J., also thought the goods passed under the assignment, for the creditor had seized the goods and the debtor had acquiesced in his possession, and by that means had ratified the invalid transfer.

Where a licence to seize after acquired chattels has been executed to the extent of taking possession of the same by the grantee thereof, it is the same as if the grantor had himself put the grantee in actual possession of them. Whether the debtor give possession of the goods and chattels, by delivery with his own hands, or direct the creditor to take them, or acquiesce in his possession, the effect *after actual possession* by the grantee is the same. (*Congreve* v. *Evetts*, 23 L.J., Ex. 273.) And the authority may, if the deed be capable of that construction, be extended to crops and property on after taken land, as well as on land in the possession of the grantor at the time of the execution of the deed (*Carr* v. *Allatt*, 27 L.J., Ex. 385;) and also to goods on premises, not built

until after the execution of the instrument. (*Chidell* v. *Galsworthy*, 6 C.B., N.S., 471.)

But the power must be strictly executed. If, therefore, it is a power to distrain or seize, after demand made, such demand should be made personally on the grantor, as it has been held that, if it be made on his wife in his absence it is insufficient. (*Belding* v. *Read*, 34 L.J., Ex. 212.)

Though, as we have before said, an assignment of property not in existence is invalid *at law*, and though, in equity, a contract which purports to transfer property not in existence cannot operate as an immediate alienation, simply because there is nothing to transfer, yet, if a vendor or mortgagor has agreed to sell or mortgage property, real or personal, of which he was not possessed at the time of the making of the contract, and he receive the consideration for the contract, and afterwards become possessed of property answering the description in the contract, and the property is of such a nature that specific performance would be decreed in equity, the beneficial interest in the property is transferred to the purchaser or mortgagee as soon as the property is acquired; and, immediately on the acquisition of the property described, the vendor or mortgagor will hold it in trust for the purchaser or mortgagee, according to the terms of the contract. "For, if a contract is in other respects good and fit to be performed, and the consideration has been received, incapacity to perform it at the time of its execution would be no answer, when the means of doing so were afterwards obtained." (Per Lord Westbury, in *Holroyd* v. *Marshall*, 33 L.J., Ch. 193.) The case last cited admirably illustrates the above propositions. There, A., by deed assigned to B., all machinery in and about a certain mill upon trust for securing a sum of money; and it was thereby provided that all machinery

which, during the continuance of the security, should be fixed or placed in the mill, in addition to, or in substitution for, the former machinery, should be subject to the trusts of the assignment; and A. undertook to do all that was necessary to vest the substituted and added machinery in B. Before actual possession was taken by B., the machinery (including some which had been added since the assignment), was taken in execution by a judgment creditor; and it was held by Lord Campbell that, as to the after acquired machinery, the security not having been perfected by taking possession, was void in equity, as well as at law, against the execution creditor. But the House of Lords, on appeal, reversed the decision and held that, a good equitable charge was created, giving to B., the mortgagee, a title preferable to that of the execution creditor, for as it was observed, the after acquired machinery was in the possession of A. as a trustee for B.

Although, however, after acquired chattels may be assigned in equity, and a contract to assign may in equity operate as an actual assignment, yet, in order that a mere contract may amount to an actual assignment, it must purport to confer an interest in the future chattels immediately by its own force, and without the necessity of any further act on the part of the assignee upon the future chattel coming into existence. Therefore, an assignment of *existing chattels*, coupled with words which amount to a *mere licence* to seize after acquired property, will not be construed as an equitable assignment of the latter. Thus, where S., the lessee of a brickyard, by a bill of sale, assigned to G. all the prepared clay, bricks, &c., *which were then in and upon the brickfield*, and gave G. full licence, power and authority at all times during the continuance of the security, to enter the premises and seize and hold possession of all and every clay,

bricks, &c., which might then be in, upon, or about the said premises, in such and the like manner as if the same formed part of the chattels and effects thereby expressed to be assigned. Circumstances arising which prevented the licence to seize being acted upon, it was contended that the licence acted as an equitable assignment; but it was decided that it did not (*Reeve* v *Whitmore*, 33 L.J., Ch. 63), Lord Westbury thus lucidly explaining the distinction: "The principal question is, whether the assignment by way of mortgage from S. to G. operates as a present contract with respect to the bricks, and the clay, and the materials that might thereafter be brought upon the premises by S. If there were upon the face of the deed, either expressly, or if there could be collected from the provisions of the deed by necessary implication, a contract or agreement between the parties that the mortgagee should have a security attaching immediately upon future chattels to be brought on the premises, then, undoubtedly, the contract would have given to the mortgagee, G., a present interest in all those materials, whether manufactured or raw, which might be brought on the brickfield after the date of the security. But it is quite clear, so far as express words are concerned, there is nothing of the kind to be found. * * * The deed may be accurately represented as being a contract and a security to the extent of all the manufactured articles, &c., then upon the premises, and a contract that the mortgagee should have a power at any time, whenever he pleased, of entering upon the premises and seizing the manufactured and raw material that he might find there, even although these things so seized were not upon the premises at the time of the security. The difference, therefore, is very clear and distinct with regard to the operation of the deed; it is the difference between a present contract

that the mortgagee should have a right and an interest attaching immediately by force of the contract upon all that property which, *in futuro*, might be brought upon the premises, and a contract that, the mortgagee should have a power of entering upon the premises for the purpose of seizing and taking possession of that future property. The contract that he should have a power to seize, appears to me, to be perfectly distinct from a contract that he should have a present and immediate right, which would attach *instanter* upon the property brought upon the premises without the act of seizure. I think he had no such thing. I think the true extent and operation of the deed was merely this, that he had passing to him, by virtue of the contract, a right and a security on, and an interest in, all the then existing property; and the security is accompanied by a power enabling him at any time to enter upon the premises, and take the future property that might be found there. But a power is a very different thing from an interest; and if the extent and limit of the contract be merely that he should have such a power, then, an interest would not arise under the power till the power was exercised."

Where a bill of sale contains, together with an assignment of existing property, words which amount to a licence to seize after acquired property, but which do not amount to an equitable assignment of the latter, such licence is only co-extensive with the debt, and cannot be exercised after the debt has been barred by the bankruptcy of the debtor. (*Cole* v. *Kernot*, 41 L.J., Q.B. 221.)

In order to transfer the right of property in goods and chattels by a bill of sale, or other instrument of transfer, the chattels intended to be conveyed must be ascertained and identified at the time of the execution of the instrument, or, in other words, there must be no un-

certainty as to what subject matter the security is intended to apply. If I grant a man twenty deer to be taken out of the herd in my park, no right of property in any particular deer passes to the grantee. But, if I have a black deer amongst the other deer in my park, I can grant him, and the grant is good; or, if I have two that can be distinguished from the rest and I grant one, or both of them, it is good for this, that it is certain what thing is granted. A grant of fifty quarters of corn, twenty hogsheads of ale, or a dozen baskets of fruit, amounts only to a covenant to deliver goods answering the description used in the grant, and does not operate as an immediate transfer of any particular parcel of corn, quantity of ale or fruit, unless the corn was measured, the ale put into hogsheads, and the fruit into baskets and set apart so as to be ascertained and identified at the time of the execution of the grant. (Addison on Contracts, 142.) Of course it is not necessary to *particularize* the chattels, only to *identify* them. So that, if any general description will unmistakeably point out what is meant, that is sufficient; as, for instance, "all the sheep now on my farm at B.," or, "all the furniture, now in, or hereafter to be placed in, my house at C.," &c.

The above cited clause in the Bills of Sale Act, 1854, defining "personal chattels," mentions "fixtures;" but it will be observed that the term is qualified by the words "which are capable of complete transfer by delivery." And, therefore, only such fixtures as are only slightly fixed to the land, and have not lost their chattel character, and are liable to be distrained, are within the Act. When the fixtures are of such a nature, to give a valid title to them, they must be granted or mortgaged by an instrument perfected under the Bills of Sale Acts, and to include such fix-

tures of this class as may be afterwards acquired, a clear intention must be expressed or implied in the instrument to include and affect them as they are subsequently acquired or brought upon the premises, in the same manner as other chattels hereinbefore noticed.

A different consideration arises where, the fixtures, though chattel, are either absolutely or in a qualified manner fixed to the freehold. Fixtures of every description annexed to the land pass, in general, without being specified, by a conveyance of the land to which they are affixed. And there is no distinction in this respect between a conveyance by way of mortgage, and an absolute conveyance; nor do such conveyances require registration, merely because they carry the fixtures. (*Mather* v. *Fraser*, 2 K. & J. 558.) Even what are commonly known as trade or tenant fixtures, that is, things which are annexed to the land for the purposes of trade, or of domestic convenience, or ornament, in so permanent a manner as to become part of the land, and yet the tenant who has erected them is entitled to remove them during his term, or it may be within a reasonable time after its expiration; form part of the land and pass by a conveyance of it, and though, if the person who erected those fixtures was a tenant with a limited interest in the land, he has a right, as against the freeholder, to sever the fixtures from the land, yet, if he be himself the owner of the soil, and mortgage the land in fee, he has no such right as against his mortgagee, for the fixtures in that case pass under a mortgage of the land. (*Climie* v. *Wood*, 38 L.J., Ex. 223; *Holland* v. *Hodgson*, 41 L.J., C.P. 146.)

And an equitable mortgage by deposit of title deeds as well as a legal mortgage, includes the fixtures, and that, whether the deposit be or be not accompanied by

a memorandum of agreement. (*Ex parte Price*, 2 Mont., D. & De G. 518.) And both the title of the legal mortgagee, and the lien of the equitable mortgagee, extend to fixtures set up subsequently to the mortgage. (*Walmsley* v. *Milne*, 7 C.B., N.S. 115.)

Therefore, it may be stated as a general rule that, by the mortgage of land, or a mill, or other buildings, not only all fixtures annexed to it at the date of the security, but all those which are afterwards annexed by the mortgagor, whether they be or be not such as are removeable, as between landlord and tenant, will vest in the mortgagee. It is no ground of objection to the rule that, the fixtures were affixed after the mortgage, by a partnership firm occupying the premises for the purpose of the trade, though the mortgaged property belonged exclusively to one partner, the mortgagee not being concerned with the equities arising from the partnership. (*Cullwick* v. *Swindell*, L.R., 3 Eq. 249.)

The general rule is, however, subject to qualification arising out of the terms of the security, and, undoubtedly, fixtures will not pass by a mere conveyance of the land if such can be inferred to be the intention of the parties; but, it would seem that such an intention ought not to be inferred, except on grounds which would authorise the like inference as to any other integral part of the subject matter of the conveyance. Though, in general, where no fixtures are specified all will pass; yet, if fixtures are specially mentioned, they may be mentioned in such terms as to raise the inference that the security was confined to those which existed at its date, or such as have been afterwards annexed may be excluded by subsequent dealings of the parties. And in a case that has been questioned (*Hare* v. *Horton*, 5 B. & Ad. 715), it would seem to have been held, that, if two kinds of property be

mortgaged, and the fixtures in one of them be mentioned, but not the fixtures in the other, the latter will not pass. But it has also been decided that, the subsequent enumeration of specific fixtures on the mortgaged property, will not rebut the inference that all fixtures were intended to pass. (*Mather* v. *Fraser*, 2 K. & J. 536.)

The rule as to the vesting of fixtures in the mortgagee of the buildings or soil to which they are affixed, extends to mortgages of leasehold as well as of freehold, and if a tenant of leasehold property execute a mortgage of that property, and the fixtures, all articles which are so affixed to the freehold, as to make it appear that during his term he regards them as attached to the property, will pass under the mortgage, and the deed will not require registration. (*Boyd* v. *Shorrock*, 37 L.J., Ch. 144.)

It must, however, be borne in mind that an assignment of fixtures, without any interest in the land, would come within the Act, and require registration as a bill of sale of personal chattels. And so, where a mortgage creates a separate charge on machinery and fixtures distinct from the land, and gives the grantee a right to disannex such machinery and fixtures from the freehold and sell them, the instrument is a bill of sale. (*Waterfall* v. *Penistone*, 26 L.J., Q.B. 100.) And Vice-Chancellor Malins even decided (*Begbie* v. *Fenwick*, 19 W.R. 402), that, where a mortgage deed contains two witnessing parts, one assigning the property, the other the machinery, the mortgage deed is a bill of sale, and must be registered. But doubts have been expressed whether this decision would be followed. (And see S.C. 20 W.R. 67.)

As questions often arise as to what are fixtures, that is, what is a sufficient annexation to the land to make a chattel become a part of it and pass with it

by a conveyance, it may not be inappropriate to quote the rule recently laid down by Blackburn, J., in *Holland* v. *Hodgson* (41 L.J., C.P. 146): "There is no doubt that, the general maxim of law is, that, what is annexed to the land becomes part of the land, but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances as indicating the intention, viz., the degree of annexation and the object of the annexation. Where the article in question is not further attached to the land than by its own weight, it is generally to be considered a mere chattel. (See *Wiltshear* v. *Cottrell*, 22. L.J., Q.B. 177; and the cases there cited.) But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land. Thus, blocks of stone placed one on the top of another without any mortar or cement, for the purpose of forming a dry-stone wall, would become part of the land, though the same stones, if deposited in a builder's yard, and, for convenience sake, stacked on the top of each other in the form of a wall, would remain chattels. On the other hand, an article may be very firmly affixed to the land, and yet the circumstances may be such as to show that it was never intended to be part of the land, and then it does not become part of the land. The anchor of a large ship must be very firmly fixed in the ground in order to bear the strain of the cable, yet no one would suppose that it became part of the land, even though it should chance that the shipowner was the owner of the fee of the spot where the anchor was dropped. An anchor similarly fixed in the soil for the purpose of bearing the strain of the chain of a suspension bridge would be part of the land. Per-

haps, the true rule is that, articles not otherwise attached to land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to shew that, they were intended to be part of the land; the onus of shewing that they were so intended lying on those who assert that they have ceased to be chattels; and that, on the contrary, an article which is affixed to the land, even slightly, is to be considered as part of the land, unless the circumstances are such as to shew that it was intended all along to continue a chattel; the onus lying on those who contend it is a chattel."

It may also be mentioned that, with any fixture will pass, without special mention, whatever, though accidentally detached from it, or not of its own nature a fixture, may be essential for the proper employment of the machine or fixed article of which it forms part, even though it be more or less capable of use in a detached state. Such may be the stone of a mill removed for the purpose of repair, or the anvil of a steam hammer, and the same rule is applicable in the case of machinery not of a fixed kind; so that, by a mortgage of looms and other effects belonging thereto will also pass the healds, reeds and other fixed adjuncts, without which, though they are separate from, and are not always sold or supplied with, the looms, the latter are unfit for weaving. (1 Fisher on Mortgages 29.)

CHAPTER III.

Under what circumstances a bill of sale will be void against creditors under the statute 13 *Eliz., c.* 5.

One of the first and most material points to be considered in relation to a bill of sale, is to ascertain that the transaction which it embodies or represents, is not a mere trick or contrivance, on the part of the maker, to defeat the rights of his creditors; and that the bill of sale is intended to have operation as a real instrument, according to its apparent character and effect. From the earliest period of our legal history, we find evidence of the great suspicion and disfavour with which the law regards all dealings of a man with his property, by which he places out of the reach of his creditors, the ordinary remedies for the recovery of their debts. So early as the fourteenth century, a statute was passed for rendering such transactions void; and in the reign of Elizabeth, two statutes, still in force, were passed, having the same object. The one (27 Eliz., c. 4) applies only to real estate; the other (13 Eliz., c. 5) renders void all conveyances made with intent to delay or defraud creditors, and applies as well to goods and chattels as to land.

The preamble of this statute declares it to be made "For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements as of goods and chattels," which "have been and are devised and contrived of malice, fraud, covin, collusion, or guile to the end,

purpose, and intent, to delay, hinder, or defraud, creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, &c., not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and chevisance (*i.e.*, contract or agreement), between man and man, without the which no commonwealth or civil society can be maintained or continued."

By the second section it is enacted "That all and every feoffment, gift, grant, alienation, bargain, and conveyance of lands, tenements, hereditaments, goods, and chattels, or of any of them, or of any lease, rent, common, or other profit, or charge out of the same lands, tenements, hereditaments, goods, chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment, and execution, at any time had or made sithence the beginning of the Queen's Majesty's reign, that now is, or at any time hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators, and assigns, and every of them whose actions, suits, debts, accounts, &c., by such guileful, covinous, or fraudulent devices and practices as aforesaid, are, shall, or might be, in anywise disturbed, hindered, delayed or defrauded), to be clearly and utterly void, frustrate, and of none effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding."

By the sixth section it is provided "That this Act, or anything therein contained, shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods, or chattels had,

made, conveyed, or assured, or hereafter to be had, made, conveyed, or assured, which estate or interest is or shall be upon good consideration, and *bonâ fide* lawfully conveyed or assured to any person or persons, or bodies politic or corporate, not having at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such covin, fraud, or collusion as aforesaid, anything before mentioned to the contrary hereof notwithstanding."

This statute, which has been said to have been merely declaratory of what was previously the common law of the land (*Rickards* v. *Attorney-General*, 12 Cl. & F. 42), makes a fraudulent conveyance of any kind absolutely void as against the grantor's creditors, and their representatives or trustees in bankruptcy, both at law (*Doe* v. *Ball*, 11 M. & W. 531), and in equity (*Holmes* v. *Penney*, 26 L.J., Ch. 179: and per Kindersley, V.C., *Hue* v. *French*, ib. 317), and as well against creditors who became so subsequently, as against those who were so before, the transaction. (*Graham* v. *Furber*, 14 C.B. 410.)

But even a fraudulent assignment is binding as against the party making it, and strangers, other than creditors (*Doe* v. *Roberts*, 2 B. & Ald. 367; and see *White* v. *Morris*, 11 C.B. 1015), so no person can take advantage of the statute, but the parties injured by the fraudulent assignment, amongst whom, of course, are creditors who are prejudiced by it, but even creditors cannot, if they be privy or consenting thereto. (*Olliver* v. *King*, 25 L.J., Ch. 427.)

A fraudulent conveyance passes no property, and it is, when set aside, looked upon as having been no conveyance at all, so that, where a man makes a fraudulent gift of goods, which is therefore void against his creditors, and dies indebted, he is considered to have died in full possession as to the claims of his creditors.

and the goods are assets in the hands of his personal representative. (*Shears* v. *Rogers*, 3 B. & Ad. 362.) Where a creditor took an absolute bill of sale of the goods of his debtor, but agreed to leave them in his possession for a limited time, and in the meantime the debtor died, whereupon the creditor took and sold the goods, he was held liable to be sued as *executor de son tort* for the debts of the deceased. (*ib.*)

In determining, whether, a bill of sale is void under the statute 13 Eliz., c. 5, the state of circumstances at the time the bill of sale was made must be regarded, and not subsequent events, except such, as may be presumed to have been in the contemplation of the grantor, at the time he executed the deed.

No exact and inflexible definition of fraud can safely be framed. As fraud is sometimes a question of law, sometimes a question of fact, and sometimes a mixed question of law and fact, and the whole question of fraud or no fraud, depends upon the particular circumstances of each case, and is to be determined by the jury (*Martindale* v. *Booth*, 3 B. & Ad. 498), or equity judge. The statute was designed, in the language of its preamble, to avoid transactions devised to the "purpose and intent to delay or defraud creditors." It is obvious, that the intention of a man in doing any particular act must be, in almost every case, a matter known only to himself, but it has become the practice to regard certain acts or circumstances as indicative of a fraudulent intention, although, even these are not absolutely conclusive evidences of fraud. We now propose to consider the most important of these evidences or, as they are sometimes termed, " badges " of fraud.

(1). *Effect of continuance of possession on the part of the grantor.*—The Courts have laid down the doctrine that, if a man execute a bill of sale of his property, and be afterwards permitted to remain in possession, a

strong presumption of fraud arises, for it is obvious that, ostensible occupation is a tacit assertion of ownership, whereby, credit may be obtained, tradesmen be induced to supply goods, and debts be contracted. On the other hand, want of possession is in no instance a mark of fraud against creditors who concur and are parties to it.

In *Twyne's Case* (3 Rep. 80), decided only ten years after the passing of the statute, a debtor, in secret, made a general gift of all his goods and chattels to one of his creditors in satisfaction of his debt; and, nevertheless, after making the bill of sale, continued in possession of the goods. It was held that, the deed was fraudulent, under the Act of Elizabeth, as against another creditor, who subsequently took the goods in execution; for, although, there was a debt really due to the grantee, yet, for the conveyance to come within the proviso of the Act (sec. 6), the sale must be both for valuable consideration, and also *bonâ fide*, and the circumstance of the debtor remaining in possession was treated by the Court as one of the signs of fraud; but the sale in this case was held void, chiefly because the donor not only continued in possession, but used the goods as his own to trade and traffic with others, and so defrauded and deceived them. This case was decided under 13 Eliz., c. 5, only; but such a gift would now be voidable otherwise than under that statute, as will be noticed in a subsequent chapter. In *Edwards* v. *Harben* (2 T. R. 587), all the judges were unanimously of opinion, that, unless possession *accompanies and follows* a bill of sale, it is fraudulent and void in point of law. But in this case there were additional indications of fraud, viz., the generality of the assignment; and the fact that more property was assigned than was necessary to cover the debt. Moreover, the broad rule there laid down has been materially quali-

fied by subsequent decisions, the result of which may be stated to be, that, although continuance in possession by the grantor, is ever considered a strong presumption of fraud, yet, it may be rebutted by extrinsic evidence (*Watkins* v. *Birch*, 4 Taunt. 823); and, practically, the doctrine is limited to absolute bills of sale, under the terms of which the grantee would be entitled to immediate possession. If a bill of sale be made to take effect at some future time, or upon particular conditions expressed in the instrument, the sale is not void, though possession be not delivered immediately; because, the grantor's continuance in possession until such future time, or until the condition be performed, is consistent with the stipulations of the deed. For instance, where the bill of sale is conditional, as by way of a mortgage, and contains a provision, that the mortgagor shall retain possession until he makes default in payment of the mortgage money, and he does so, the transaction is valid (*Martindale* v. *Booth*, 3 B. & Ad. 498), in which case, Lord Tenterden, C.J., said: "The consideration for the bill of sale was not only an antecedent debt, but a sum of money to be advanced by the plaintiffs to enable P. to carry on his trade. The omission of the plaintiffs to take possession of the goods was perfectly consistent with the deed; for it was stipulated that P. should continue in possession until default made in payment of all or any of the instalments, and that on such default it should be lawful, although no advantage should have been taken of any previous default, for the plaintiffs to enter and take possession of the household goods and furniture. The possession by P., therefore, being consistent with the deed, and it having been given in consideration of money advanced to enable P. to carry on his trade, I cannot say that it was absolutely void." Indeed, under such a pro-

vision the mortgagor, until default, can maintain an action of trespass against any person (including the mortgagee himself), who may seize the goods. (*Brierly* v. *Kendall*, 17 Q.B. 937.)

Again, if it be consistent with the nature of the transaction—for instance, where the instrument in substance, though not in form, is a mortgage—the mortgagor may retain possession of the goods assigned, until default, without thereby rendering the bill of sale necessarily void under the statute of Elizabeth, even though the deed does not contain an express provision enabling him to do so. A striking illustration of this proposition will be found in the case of *Cook* v. *Walker*. (3 W.R. 357.) There, a bill of sale was given of the furniture and effects of an hotel, by way of security, but the document contained no proviso enabling the maker to retain possession until default. There was no evidence that the grantor was in insolvent circumstances at the date of the bill of sale; and it was held that, the fact of his retaining possession of the goods, did not render the instrument impeachable by his other creditors, the transaction being a mortgage, and it appearing necessary for the purposes of his business that the grantor should remain in possession of the property.

Although, therefore, the want of delivery of possession, *when consistent with the deed, or with the nature of the transaction*, will not make the transaction fraudulent and void, it is, at the same time, not wholly protected by that circumstance, but may be impeached by any other presumption or proof of fraud. "Where," said Lord Abinger, C.B., "the possession is according to the deed, that will not set up the deed, if the jury should think the deed was a fraud." (*Riches* v. *Evans*, 9 C. & P. 640.)

The principle then, is that, in most cases, want of

possession is a circumstance requiring explanation, in the absence of which, a jury may be led to infer that the bill of sale was never intended to operate: so that, where a bill of sale of chattels is not conditional, or by way of mortgage, but is made in satisfaction of a debt, the grantee, for his own safety, should take possession of the goods immediately after the gift.

(2). *Effect of an absence of valuable consideration.*—Another grave, though not absolutely conclusive, indication of fraud, appears where, a bill of sale is made by a debtor without valuable consideration, for a man has no right to give away that, which, he owes to his creditors. "Benevolence, generosity, forbearance, may be well exercised, with this restriction, however, that the practice of these moral virtues is not made at the expense of other people. To hold the contrary, would be directly opposed to the commonest principles of justice and honesty." (Per Bacon, C.J.B., *Ex parte Williams*, L.R., 10 Eq. 61.) And, said Lord Hatherley, L.C., in *Freeman* v. *Pope*, (L.R., 5 Ch. App. 540),—"The principle on which the statute of 13 Elizabeth, c. 5, proceeds, is this, that persons must be just before they are generous, and that debts must be paid before gifts can be made." The sale, therefore, should be for an adequate consideration, for—although the Court will not weigh nicely the amount—gross inadequacy of payment for the goods conveyed, will be esteemed strong evidence of fraud (*Dewey* v. *Bayntun*, 6 East. 282; *Strong* v. *Strong*, 18 Beav. 408); but even should the full consideration be given, yet it must not be given in such a form as to defeat creditors, (*Stileman* v. *Ashdown*, 2 Atk. 477), for instance, as for the maintenance of the debtor for his life; for if so the bill of sale will be set aside (*Neale* v. *Day*, 28 L.J., Ch. 45; see also *French* v. *French*, 25 L.J., Ch. 612.) But, where a debtor

sells property for an adequate consideration, his estate is not diminished—it exists, though in a different form—and being still available to pay his debts, no one is injured. (*Copis* v. *Middleton*, 2 Mad. 410-430.)

A bill of sale, not being fraudulent against creditors under the statute, unless a fraudulent intention to defeat the rights of creditors is properly established, proof of such fraudulent intention will, of course, supersede any consideration. (*Bott* v. *Smith*, 21 Beav. 511.) Where a bill of sale is made in consideration of a present advance, and not merely in satisfaction of a previous debt, it is far less liable to, though, of course, not necessarily free from, the imputation of fraud. If I lend A.B. money to buy furniture, and then take a bill of sale of the goods to secure myself, and leave the furniture in his possession, the bill of sale (due formalities being observed) will hold good; and so, where goods taken in execution were sold by auction, and purchased by a person, not a creditor, who took a bill of sale of the sheriff, and then lent the goods to the original owner for a temporary and honest purpose, the bill of sale was held good. (*Kidd* v. *Rawlinson*, 2 Bos. & Pul. 59.) Where the consideration for a bill of sale was not only a previous debt, but also a present advance to enable the debtor to carry on his trade, that fact has been considered evidence of the good faith of the transaction. (*Martindale* v. *Booth*, 3 B. & Ad. 498.) But the present advance should be substantial, and in determining the question, whether a particular bill of sale is *bonâ fide* or a contrivance to defeat creditors, a jury will always consider the relative value of the property withdrawn from the reach of the creditors, in proportion to the amount of their claims at the time, and the value of that substituted for it. (*Dewey* v.

Bayntun, 6 East, 257.) It must be remembered that, under this statute, if a bill of sale be not made *bonâ fide*, the fact that it was made for a valuable consideration, will not alone protect it against creditors. "I have known," said Lord Mansfield, in the well known case of *Cadogan* v. *Kennett*, (Cowp. 434), "several cases where persons have given *a fair and full price* for goods, and where the possession was actually changed; yet, being done for the purpose of defeating creditors, the transaction has been held fraudulent and therefore void. * * * * So, if a man knows of a judgment and execution, and with a view to defeat it purchases the debtor's goods, it is void, because the purpose is iniquitous. It is assisting one man to cheat another, which the law will never allow." And so, where a trader's goods having been seized under a *fi. fa.*, the defendant paid to the sheriff the amount at which the goods had been valued, being just sufficient to satisfy the sheriff's execution, who duly executed a bill of sale to the defendant, who was aware that the trader was indebted to other creditors. The jury having found that the object of the transaction was not merely to relieve the trader from a forced sale, but to protect the goods from other creditors, the sale was declared to be void under 13 Eliz., c. 5. (*Graham* v. *Furber*, 23 L.J., C.P. 51.)

A *bonâ fide* purchaser, for valuable consideration, without notice of any fraud on creditors, is more entitled to be protected than the creditors themselves, whose only claim is on the general estate, for he has paid his money for those particular goods which he claims, and is expressly exempted from the operation of the Act by the sixth section; and, even though there are some suspicious circumstances, a purchase will be held good, unless it be shown that, it was in fact a contrivance to defeat creditors, and that the purchaser

was privy to it. (*Hale* v. *Saloon Omnibus Company*, 28 L.J., Ch. 777.) And in another case, it was held that, where a bill of sale has been made for value, not only must fraud be shown, in order to avoid the transaction as against the purchaser, but it must be shown that he was privy to the fraud against creditors; for, unless this position can be established, the purchaser who has paid his money, or other consideration, has a right, paramount to that of creditors. And the purchaser must have notice, not only of the debt, but of the fraudulent intention. (*Jones* v. *Boulter*, 1 Cox, 288.)

(3.) *Effect of the absence of a valuation or appraisement.*—There should be a proper valuation or appraisement of the goods and chattels, prior to the making of the bill of sale, for otherwise it may be inferred that the transfer was not intended to be a real one. Both vendor and purchaser, should, of course, know the true nature, and value of that which they intend shall be transferred. (*Twyne's Case*, 1 Sm., L.C.)

(4.) *Effect of secrecy in the transaction.*—Secrecy is always a badge or mark of fraud, and, conversely, notoriety of change of ownership, necessarily, lessens the presumption of fraud. Actual change of possession is, of course, notice to the world that there has been a change of ownership, but such notice may be equally well given by notoriety, so that the presumption of ownership remaining in the grantor may be effectually rebutted. In the case of *Wordall* v. *Smith* (1 Camp. 332), Lord Ellenborough said—"There must appear to have been a *bonâ fide* substantial change of possession. It is a mere mockery to put in another person to take possession jointly with the former owner of the goods, a concurrent possession with the assignor is colourable. There must be an exclusive possession under the assignment, or it is

fraudulent and void as against creditors." But if there are other circumstances—as, for instance, the fact that the execution of the bill of sale is notorious in the neighbourhood,—which show the joint possession to be consistent with good faith in the parties to the transaction, the presumption of fraud may be negatived. A striking illustration of this last proposition is in *Latimer* v. *Batson* (4 B. & C. 652), where, the sheriff seized the goods of the Duke of Marlborough, and sold them to the judgment creditor, who sold them to the plaintiff, who put a man in possession, but allowed them to remain in the Duke's mansion and be used by him as before; it was held that, it was properly left to the jury to say whether the sale was a *bonâ fide* sale for money paid by the plaintiff, and that, if so, they should find a verdict for him. Here, it will be perceived, the goods had been seized by the sheriff, who is a public officer, and his seizure a public act; so that the transaction was accompanied with some notoriety, the circumstances attending the execution being known in the neighbourhood, and the Court considered the notoriety of the transfer operated against the presumption of fraud. In other cases, it has been held also, that, if goods, seized under an execution, are sold *bonâ fide*, and the buyer suffers the debtor to continue in possession of the goods, still, they are protected against subsequent executions, if the circumstances under which he has the possession are known in the neighbourhood. (*Leonard* v. *Baker*, 1 M. & S. 251; *Watkins* v. *Birch*, 4 Taunt. 823; *Jezeph* v. *Ingram*, 8 Taunt. 838.) In *Twyne's Case* (*supra*), which is the leading case on this subject, Lord Coke gave advice to those who take a bill of sale, in satisfaction of their debt, from one who is indebted to others also. "Let it be made in a public manner, before the neighbours, and not in

private, for secrecy is a mark of fraud. Let the goods and chattels be appraised by good people to the very value, and take a gift in particular, in satisfaction of your debt. Immediately after the gift take possession of them; for continuance of the possession of the donor, is a sign of trust."

Of course, a mere formal delivery or colourable possession will not be enough. In order to make a bill of sale valid under the Act of Elizabeth, every step in reference to it must be honestly taken, in good faith, without design to delay or defraud the creditors, whom the statute was expressly passed to protect.

Besides the evidences of fraud above mentioned, three are other circumstances mentioned in the reports as raising the presumption of fraud. Reservation of a power to mortgage, as being actually a power of revocation, is a constant evidence of fraud (*Tarback* v. *Marbury*, 2 Vern. 509); the fact that the owner permits third persons to treat the property as the debtor's (*Lady Arundell* v. *Phipps*, 10 Ves. 151); the grantor keeping the deed in his own custody, which, obviously, leads to the inference that the instrument was not meant to operate as a *bonâ fide* transfer (*Doe*, d. *Grimsby* v. *Ball*, 11 M. & W. 533); the absence of a schedule to the deed of the goods conveyed, and the fact that, the bill of sale does not represent the real contract between the parties, are also circumstances, which, the Courts regard with suspicion.

A Bill of sale is not void under the statute because it has the effect of delaying a particular creditor, if it be made *bonâ fide*, on the demand of a creditor, and for good consideration, and not for the mere purpose of defeating creditors. The debtor may, therefore, at any time before execution by a judgment creditor, either secure one particular creditor, or provide rate-

ably for all his creditors. (1 Fisher on Mortgages 200.) To support such a transaction and to rebut the presumption of fraud arising from an apparent want of consideration, evidence of the real circumstances and of the existence of a valuable consideration, may be given, provided it do not contradict the allegations of the deed. (*Gale* v. *Williamson*, 8 M. & W. 405.)

A bill of sale may be good under 13 *Eliz., c.* 5, *though made to defeat an expected execution.*—The Act of Elizabeth, which we are now considering, does not prevent a debtor preferring one of his creditors to the rest; and a *bonâ fide* sale or mortgage of goods for a valuable consideration, is not invalidated by reason of the grantee's knowledge that it is made to defeat an expected execution. (*Wood* v. *Dixie*, 7 Q.B. 892.) In that case, a debtor executed a bill of sale by way of mortgage of his goods, as a security for money lent; and Coltman, J., told the jury, that, if the transaction was to defeat the execution creditor, the conveyance *was* void as against him; and the Court of Queen's Bench held that direction *wrong*. There the security was money lent at the time; but it applies equally where the consideration is an antecedent debt, for said Gibbs, C.J. (in *Benton* v. *Thornhill*, 2 Mars. 430, S.C., 7 Taunt. 149), "there is no rule of law which prevents a man from preferring one *bonâ fide* creditor to another;" and a debt due is a good and valuable consideration.

But the preference must not be really fraudulent—as, for instance, if a man's creditors have all agreed to accept a composition, and the debtor makes a secret transfer to one of them to induce him to sign the deed, to which all the creditors are parties—such transfer would clearly be voidable as a fraud upon the other creditors. (*Leicester* v. *Rose*, 4 East, 372.)

A fortiori—a transfer of the property of the debtor

to trustees for the benefit of *all* his creditors is not void by the operation of the statute; but it is otherwise under the Bankruptcy Act, 1869. (See Chapter V.)

It may also be observed that to prove a bill of sale fraudulent, declarations made by the grantor at the time of executing it, are admissible in evidence, but not those made at another time. (*Phillips* v. *Eamer*, 1 Esp. 355.)

CHAPTER IV.

Under what circumstances chattels comprised in a bill of sale will be saleable by the trustee in bankruptcy of the grantor, as being in his order and disposition at the time of bankruptcy.

It is proposed in the present chapter to point out, as clearly as the somewhat difficult and technical nature of the subject will allow, the risks to which the security of the holder of a bill of sale is exposed by the bankruptcy of the maker. The chief objects of all bankruptcy laws have been, (1) to obtain an equal distribution of the debtor's assets amongst his creditors without preference, and (2) to protect the general creditors of *a trader* against that undue credit which might be acquired by his being allowed to parade as his own, property which, in point of fact, belongs to other people. In general, such property only, as belongs to the bankrupt, is subject to distribution, but under particular circumstances, (which we shall now consider,) even the property of others is liable to be applied towards the payment of the bankrupt's debts, in the same manner as any other part of his estate.

The property of a bankrupt divisible amongst his creditors is clearly described in the 15th section of the Bankruptcy Act, 1869, the 5th sub-section of which declares that it shall comprise amongst other things:—

"All goods and chattels being, at the commence-

ment of the bankruptcy, in the possession, order, or disposition of the bankrupt, *being a trader*, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner; *provided that things in action*, other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause."

As to who are traders within the Bankruptcy Act, 1869. —Naturally, the first inquiry in considering this sub-section is, to whom is it applicable, that is, who are "traders" within the Act? By section 4 the persons mentioned in the schedule are declared to be traders within the Act. The schedule is, as follows:—"Alum makers, Apothecaries, [a surgeon who was licensed to practice as an apothecary and supplied medicines to his patients *only*, was held to be a trader as an apothecary; *Ex parte Crabb*, 8 De G., M. & G. 277.] Auctioneers, Bankers, [does not include army or navy agents. *Ex parte Wilson*, 1 Atk. 217. A person may be included who acts as a banker, even though he do not keep open shop or books, as bankers usually do. Ib.] Bleachers, Brokers, [includes pawnbrokers, *Rawlinson* v. *Pearson*, 5 B. & Ald. 124; bill-brokers, *Ex parte Phipps*, 2 Dea. 487; ship-brokers, *Pott* v. *Turner*, 6 Bing. 702; insurance brokers, *Milford* v. *Hughes*, 16 M. & W. 174; stock-brokers, and a solicitor who was in the habit of laying out money, in investments for his clients was adjudicated bankrupt, as a money broker. *Ex parte Gem*, 2 M., D. & D. 99.] Brick-makers, Builders, [a builder is a person who builds for hire, or by contract for others for profit; a person who bought six carcases of houses for the purpose of finishing and selling them, and who ordered materials for this purpose, representing himself as a builder, was

held a trader; but one or two isolated transactions will not make a man a builder, where there is no intention to carry on the business as a means of livelihood. *Stuart* v. *Sloper*, 3 Ex. 700; *Ex parte Stewart*, 18 L. J., By. 14.] Calenderers, Carpenters, [includes any person who buys timber and works it up for sale. 3 Mod. 155.] Carriers, Cattle or Sheep salesmen, [includes a farmer who habitually buys many more cattle or sheep than are necessary to stock his farm, and sells the surplus at a profit; for he is, in fact, a cattle jobber as well as a farmer. *Ex parte Newall*, 3 Dea. 333.] Coach proprietors, Cow keepers, [a farmer who keeps cows on his pasture land and sells the milk to a retail dealer, is not a cow keeper within the Act; *Ex parte Dering*, De G. 398; nor if he retail the milk himself. *Bell* v. *Young*, 15. C. B. 524.] Dyers, Fullers, Keepers of inns, taverns, hotels, coffee houses, [this includes the keeper of a private lodging or boarding house, who buys provisions for his lodgers and charges a profit thereon; *Smith* v. *Scott*, 9 Bing. 14; also a boarding and lodging house keeper, where guests are entertained by the month or week, each having a bedroom to himself, but taking meals with the proprietor. *Gibson* v. *King*, 10 M. & W. 667.] Lime burners, Livery stable keepers, Market gardeners, [a farmer who grows peas and potatoes and consigns them to London salesmen to sell on commission, is not a market gardener. *Ex parte Hammond*, De G. 93.] Millers, Packers, Printers, Sharebrokers, Shipowners, [does not include a fisherman who owns fishing smacks used only for fishing purposes, *Re Stubbs*, 22 L. T. 291.] Shipwrights, Stockbrokers, Stockjobbers, Victuallers, Warehousemen, Wharfingers, Persons using the trade or profession of a scrivener, receiving other men's moneys or estates into their trust or custody, [in order to make

a man a money scrivener, it must be an occupation which he follows for a livelihood, and in which he carries on the business of receiving other persons' moneys, to invest for them as occasion offers. *Adams* v. *Malkin*, 3 Camp. 534; *Lott* v. *Melville*, 3 M. & G. 40; *Ex parte Dufaur*, 21 L.J., By. 38.] Persons insuring ships, &c., against the perils of the sea. Persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment or otherwise, in gross or in retail. Persons who, either for themselves or as agents or factors for others, seek their living by buying and selling, or buying and letting for hire, goods or commodities, not mere choses in action, or by the workmanship or the conversion of goods or commodities. [A farmer who occasionally buys hay, corn, horses, &c., with a view to selling again for a profit, does not thereby become a trader, *see Cattle salesmen, supra;* but a farmer buying and selling horses, to an extent unauthorized by his character of farmer, may be made bankrupt as a horse dealer though he have no licence to deal in horses. *Wright* v. *Bird*, 1 Price 20. A person who buys furniture, places it in a house, and lets the rooms as furnished lodgings, is not liable to be made bankrupt as a trader, under the words "buying and letting for hire goods and commodities." *Ex parte Bowers*, 2 Dea. 99. Persons who buy the raw materials of trade, and sell them again under another form, or improved by the labour of manufacture, as bakers, brewers, butchers, shoemakers, smiths, tanners, and tailors, *are* included.]

"But a farmer, grazier, common labourer, or workman for hire shall not, nor shall a member of any partnership, association or company which cannot be adjudged bankrupt under this Act (section 5), be deemed, as such, a trader for the purposes of this Act."

The exemption merely extends to the occupations specifically mentioned, and will not protect a person from the consequences of being a trader, who follows some other business within the statutory definition of trading; but, to prove a person a trader within the general words of the schedule, evidence of both buying and selling is necessary (Eden, Bank. 3.) An admission by the bankrupt that he is in partnership with a trader is sufficient (*Parker* v. *Barker*, 1 B. & B. 9), and the bankrupt's declarations, when buying goods, of an intention to sell again are admissible to prove the trading. (*Gale* v. *Halfknight*, 3 Stark 56.) A person may be made bankrupt as a trader, although the trade he carries on is illegal, as where a man deals in smuggled goods, or, being a clergyman, trades contrary to law. (*Ex parte Meymot*, 1 Atk. 198.)

The doctrine of "reputed ownership," as it is called, contained in the above cited sub-section, is not a novel feature in the Bankruptcy Act of 1869. It had its origin in the reign of James 1st, and although frequently objected to and reprobated, it has ever since been maintained as a principle, that, property suffered to remain in the visible possession of the bankrupt, is divisible among his creditors. "That clause refers," says Lord Redesdale, (*Joy* v. *Campbell*, 1 Sch. & Lefroy 336,) commenting upon the almost corresponding terms of an Irish Bankruptcy Act—"to chattels in the possession of the bankrupt in his order and disposition, with the consent of the true owner, that means where the possession, order and disposition, is in a person who is not the true owner, or to whom they do not properly belong, and who ought not to have them; but whom the owner permits, unconscientiously as the Act supposes, to have such order and disposition. The object was to prevent deceit by a trader from the visible possession of

a property to which he was not entitled. But, in the construction of the Act, the nature of the possession has always been considered, and the words have been construed to mean possession of the goods of another, with the consent of the true owner."

This doctrine is one most materially affecting all persons advancing money to traders on the proverbially frail security of bills of sale. The Bills of Sale Act, providing for the registration of bills of sale, has no operation in narrowing this doctrine, nor do bills of sale, which are duly registered under the Act, possess any greater validity against trustees in bankruptcy than bills of sale had, before the passing of the Act, in cases where the goods and chattels comprised therein are left in the possession of the grantor. "I do not think," observed Lord Justice Turner (*Stansfield* v. *Cubitt*, 27 L.J., Ch. 266,) "that the intention of the legislature in passing 17 & 18 Vict., c. 36, was to alter the law as to reputed ownership. The Act does not say that registration shall give any new effect to a bill of sale; and, in the enactment as to the effect of omitting to register it, various persons with some of whom the doctrine of reputed ownership has nothing to do, are classed together." Contrary opinions have been expressed by Vice-Chancellor Malins (*Ashton* v. *Blackshaw*, L.R., 9 Eq. 510,) and the Chief Judge in Bankruptcy (*Ex parte Homan*, L.R., 12 Eq. 598); but, it is submitted, they cannot be regarded as prevailing against the current of decisions supporting that of Lord Justice Turner. The effect, therefore, of the 15th section of the Bankruptcy Act, is that, as a general rule, where a person, being a trader, sells, mortgages, or otherwise disposes of any goods or personal chattels, and is allowed by the purchaser, mortgagee or donee, to retain possession of them until his bankruptcy, such chattels will be sale-

able by his trustee, and the title of the purchaser, mortgagee or donee, will be defeated, notwithstanding that the instrument under which he became entitled has been duly registered in conformity with the requirements of the Bills of Sale Acts, and is in all other respects unobjectionable.

If we consider the clause attentively, we shall at once see that the property saleable by the trustee in bankruptcy of the bankrupt, as being in his order and disposition at the time of bankruptcy, and therefore divisible amongst his creditors under this section,—

(1.) *Must consist of goods and chattels.*—Fixtures, such as are ordinarily affixed to the freehold for the convenience of the occupier, are not "goods and chattels" within the doctrine of reputed ownership (*Ex parte Barclay*, 5 De G., M. & G. 403,) nor is fixed machinery (*Ex parte Wilson, Re Butterworth*, 4 Dea. & Chitty 143 ; *Ex parte Spicer*, 2 Dea. 335) ; but it is otherwise with machinery not attached to the freehold. (*Whitmore* v. *Empson*, 23 Beav. 313.) It will however be sufficient, for the purposes of the present work, to state generally, that all goods and chattels which can be made the subject of a bill of sale requiring registration, (as to which see Chapter II.) will be affected by the doctrine of reputed ownership.

(2.) *That the bankrupt, being a trader, must have had them in his possession, order, and disposition as reputed owner.*—Actual possession on the part of the bankrupt is not necessary. If the goods are in the hands of a servant of the bankrupt, or in the possession of a third party to whom the bankrupt has lent them, and who is bound to return them when required, they are in the bankrupt's order and disposition. (*Hornsby* v. *Miller*, 1 El. & El. 192.)

The cases under this head may be divided into two classes :—(1.) Where the bankrupt was originally the

owner of the goods and chattels left in his order or disposition—as for instance, where goods are left with him after he has sold or mortgaged them to another person:—(2.) Where the bankrupt was *not* originally owner of them, as where they are left with him for some special purpose, or in the course of his trade or business.

The evidence required to establish reputed ownership in each of these cases is different; under the former class, when it is once proved that the bankrupt was originally the owner, and has continued in possession until the commission of the act of bankruptcy, the presumption is, that he then continued in possession in the character of owner, and, therefore, proof of these facts is *primâ facie* evidence that the bankrupt is both reputed and real owner. Under the latter class, the fact that the bankrupt is in possession of goods and chattels belonging to another person, will not, of itself, render them saleable by his trustee in bankruptcy, and, as the doctrine of reputed ownership is confined to those cases in which possession of the goods by the bankrupt is not justified by any *bonâ fide* purpose requiring him to have them under his control, the question will be in each case, are the circumstances under which the property is in the bankrupt's possession, order, or disposition, such as to lead to a fair and reasonable inference, amongst persons likely to have dealings with him, that he is the owner? It is obvious, that the mere possession of the goods and chattels will not, in every case, answer this question in the affirmative, and then, it will be necessary for the trustee to establish the fact by other circumstances. Therefore, where the bankrupt, having been originally owner of the goods, has sold or mortgaged them, and yet remains in possession of them without any apparent change, he

will be presumed to have continued in possession as owner, if it be not shown by the purchaser or mortgagee, as the case may be, not only that there *was* a change of ownership, but that, the change of ownership has become notorious to the world; unless, perhaps, in those cases where, from the nature of the business carried on by the person with whom the goods are left, it is not to be inferred that all the goods in his possession belong to him. (*Hamilton* v. *Bell*, 10 Ex. 545.) In that case, the plaintiff purchased some clocks of a London tradesman who kept a shop, in which were exposed for sale, clocks and watches. A part of the tradesman's business was to clean and repair clocks, and such as were sent to him for that purpose stood amongst those in the shop which were for sale. The plaintiff left the clocks which he had purchased with the tradesman, with directions that they were to be sent to him when they had been cleaned and put in order. The tradesman some time afterwards became bankrupt, the plaintiff's clocks still remaining in his shop. In an action by the plaintiff against the assignees for taking these clocks, it was held that, under the circumstances, there was no evidence, either that the bankrupt was the reputed owner of the goods, or that they were in his possession, order, or disposition, within the meaning of the Act; and, consequently, that the goods did not pass to the assignees. The presumption is, however, that all goods and chattels in the possession of the bankrupt, though not belonging to him, are, in the absence of explanation to the contrary, in his order and disposition as owner. So, if a tradesman sells goods out of his stock, but the vendee does not take them away, and they are not separated from the rest of the stock, before the tradesman becomes bankrupt, the goods will pass to his trustee in bankruptcy

(*White* v. *Wilks*, 5 Taunt. 176), although the buyer may have paid the purchase money at the time of the transaction. (*Thackwaite* v. *Cock*, 3 Taunt. 487.) But, where steps are taken to make the change of ownership sufficiently notorious, the trustee cannot claim the goods, as where they are specifically appropriated by the vendor to the vendee's use with his consent. Thus, wines sold by the bankrupt, remaining in the bankrupt's cellars, set apart in a particular bin and marked with the purchaser's seal, a memorandum being given to the purchaser by the bankrupt, acknowledging the possession of it, and an entry to the same effect being made in the books of the latter, it was held that, the wine was not in the order and disposition of the bankrupt; for, under the circumstances, creditors could not be deceived by the appearance of its forming part of the stock to which they might give credit. (*Ex parte Marrable*, 1 Glyn & Jam. 402.) But, it was held in one case, the authority of which has, however, been questioned, that goods deposited in a warehouseman's stores, and remaining there after sale, in the vendor's name, will not be secured from his trustee, until the vendee has notified the change of ownership to the warehouseman, although it may be notorious to the persons carrying on business at the place that a sale to the purchaser has really taken place. (*Knowles* v. *Horsfall*, 5 B. & Ald. 134.) But, speaking of this case, (in *Hamilton* v. *Bell*, *supra*) Alderson, B., said—"*Knowles* v. *Horsfall* was rather a conclusion which the Court ought to draw from the facts, and I almost regret having reported it." The mere handing over to a mortgagee of the key of a house of the mortgagor's, in which furniture, the subject of the mortgage, was kept, has been held not to be sufficient to take the furniture out of the order and disposition of the mortgagor. (*Ex*

parte Staner, Re Body, 33 L.T. 244.) It will be perceived that the clause does not apply to cases where the possession is in the ordinary course of business, and where it cannot reasonably induce persons to give credit. So, where a bankrupt is in possession of the goods of another, *bonâ fide* with the consent of the true owner at the time of the bankruptcy, for a specific purpose, beyond which he has not the right of disposition or alteration, such possession does not entitle the assignee to recover the value of them. (*Collins* v. *Forbes*, 3 T.R. 316.)

On this principle was decided the case of *Whitfield* v. *Brand*, (16 M. & W. 282) where the Court held that, books left in the hands of a bookseller to be sold by him, in the ordinary course of trade, did not pass to his assignees, it being notorious that books are left with publishers or others, in large quantities, to be sold on account of the person who leaves them. Where a custom exists for the buyer to leave goods bought, in the hands of the seller, and is so notorious as to be practically known to all persons dealing with the seller in his business, goods so left in the hands of the seller for a time not longer than is clearly within the custom, do not, on the bankruptcy of the seller, pass to his trustee. (*Priestley* v. *Pratt*, L.R., 2 Ex. 101.) In this manner, a carriage finished and paid for before the bankruptcy of the maker, but suffered to remain on his premises at the request of the owner, on account of his being abroad, was held not to be in the order and disposition of the bankrupt, so as to pass to his assignees in bankruptcy, although such bankrupt put it in his front shop and actually sold it to another. "We all know," said Mr. Justice Gaselee, who tried the case, "and it has been proved in the cause, that, it is customary for coachmakers to keep carriages after they are made, and to put them in a front shop, for

the purpose of display, to show what kind of carriages they make, and what description of customers they have. Under these circumstances, I am clearly of opinion that this is not a case within the meaning of the Act of Parliament." (*Bartram* v. *Payne*, 3 Car. & P. 175.) And if a ship, in course of construction, is in the yard of a shipbuilder, or goods are in process of manufacture, such ship or goods, if purchased, are not in the order and disposition of such shipbuilder or manufacturer. (*Holderness* v. *Rankin*, 28 Beav. 180; and see also *Swainston* v. *Clay*, 4 Giff. 187.) So where a person advanced money on a vessel in course of construction and took an assignment of such ship by way of mortgage to secure the repayment of the advance, it was held that the mortgage was good as against the trustee in bankruptcy of the shipbuilder.

The reputation of ownership will, therefore, vary considerably according to the usages of society, and the custom of a trade or locality, which may often take a particular case out of the rule of reputed ownership altogether, for, it is obvious, that if, from custom, the possession of a certain class of chattels does not imply the ownership of them, the possessor does not obtain a false credit by being in possession; and it has been held that it is not necessary that the custom should be known to the public at large, so long as it is so general and notorious in the trade which the bankrupt carried on, that those who did business with him, might, in the exercise of business-like caution, be reasonably induced to inquire before giving him credit, whether the goods were really his own or not. (*Watson* v. *Peache*, 1 Bing., N.C. 327.) But, by a recent decision it would seem that, in order to prove the custom, it *must* be shown to be notorious to the public generally, and that it is not sufficient that it is known to all

persons engaged in the particular trade. In *Ex parte Bolland, Re Couston*, (28 L.T. Rep. N.S., 43), it was held that, goods left in a bonded warehouse by the purchaser, but not transferred into his name in the books of the warehouse keeper, are within the order and disposition of the vendor, although the transaction is entered in the stock and bond books of the vendor in the name of the purchaser, by distinctive marks and figures, and the vendor, in the warrant given by him at the date of the purchase, acknowledges that the goods are held by him to the order of the latter. In this case, Bacon, C.J., said, "It is notorious not in the trade, but to all the world, that some commodities are matters of hiring and not of purchase. Barges are one instance; furniture, as in *Emmerson's Case* is another. But all this shows, that there is a separate and distinct branch to which the order and disposition clause does not apply. In this case it is said, that there is a custom in Liverpool, known to all the dealers in wines and spirits, the effect of which prevents the statute from applying, because, the former owner was known to have given delivery notes for the goods; but, when the case comes to be examined, it is plainly within the authority of *Knowles* v. *Horsfall* (*ubi supra*), because, what is it more than this, that, because there is a particular practice in that trade, the inference is to be drawn by all the rest of the community, who know nothing about it, which will deprive the creditors of their right under the statute? It may be a hard case, but hard cases can readily be proved against almost all Acts of Parliament." Where the produce was purchased and the price paid before the bankruptcy, but it appeared to be the custom of farmers to leave such produce upon the farm of the vendor, until it suited the convenience of the vendee to carry it away, it was held, that

this custom exempted such produce from passing to the trustee in the bankruptcy under the doctrine of reputed ownership. (*Ex parte Vidler, In re Terry*, 11 W.R. 113.)

In another case, an hotelkeeper furnished an hotel at Richmond, partly with goods he had purchased, and partly with goods which he had hired at a yearly rent; which latter goods were in the hotel at the time he became bankrupt, and were taken possession of by his assignees: but, it being proved that upholsterers were accustomed to let furniture out on hire to hotelkeepers and others, and that the custom of hotelkeepers was to hire a part of the furniture in their hotels, the Court held that, the hired furniture was not in the order and disposition of the bankrupt. (*Mullett* v. *Green*, 8 C. & P. 382.) The same doctrine was held in a case, where it was the custom in the bankrupt's business to use hired horses and carts—so the mere temporary possession of a chaise by an innkeeper, was held not to amount to reputed ownership.

But, in all these cases depending upon the usages of trade, or the custom of the locality or country, the usage or custom must be proved. In *Ashton* v. *Blackshaw* (L.R., 9 Eq. 517), Vice-Chancellor Malins said: "Therefore, as the law now is, you are not necessarily to assume that A.B., being in possession of a well furnished house, is the owner of that furniture; it may be that he hires it only, or it may be that it was his, and has ceased to be his by assignment. If he is once known to be the owner of the property, then a person is entitled to treat him as still the owner, unless there be some deed registered which shews that the ownership has changed. If, therefore, he sells the property, the purchaser must take possession as soon as circumstances permit; and if, instead

of taking possession, he allows the seller to remain in possession, then the property passes to the assignees."

The courts seem at one period to have inclined to the view, that the doctrine of reputed ownership applied only, where the possession of the bankrupt was purely permissive, so that his ownership was merely apparent; and that, where he was in possession, by which he was the true, though only limited owner, the doctrine did not apply, and, that the trustees would take no more than the limited interest vested in the bankrupt. (*Fenn* v. *Bittlestone*, 7 Ex. 152.) And upon this principle it was concluded that, where a person mortgages personal chattels by a deed so framed, that he takes under it an interest in the chattels so mortgaged for a term determinable upon his default in payment, this limited interest saves him from being merely reputed owner, and by preventing his bankruptcy from passing any thing more than the transient and defeasible interest vested in him, in effect, gives a complete protection to the mortgagee. But this view has now been overruled (*Spackman* v. *Miller*, 12 C.B., N.S. 659), and, in the case of chattels which have been sold, and then leased by the purchaser to the seller, where the latter continues in possession until his bankruptcy, it has been said that he will be considered to have continued in possession as owner till that time, unless it can be shown, not only that there was a change of ownership, but that, that change of ownership had become notorious to the world. In a noted case, where certain articles of machinery had, long before the bankruptcy, been seized by the sheriff, under an execution, at the suit of a creditor to whom they were sold at a public sale, and conveyed by bill of sale, and who marked them all with his initials, and afterwards leased them to the bankrupt, who continued in

possession till his bankruptcy; it was held, that, this was no evidence of the notoriety of the change of property, and consequently, that there was no evidence to go to the jury, that the bankrupt had ever ceased to be the reputed owner. (*Lingard* v. *Messiter*, 1 B. & C. 308.) Best, J., remarking that "if the machinery had been let to a person who had never been the owner, and he had become bankrupt, it would have been for the plaintiff to show, not only that the bankrupt was in possession, but, that he was in possession under such circumstances as might fairly induce others to think, and treat him as real owner;" but the Chief Baron Pollock, commenting upon this case, (in *Hamilton* v. *Bell*, 10 Ex. 545, *supra*,) said, "the case of *Lingard* v. *Messiter* affords a very good example of what might result from such a change of circumstances. At the time when that case was decided, it is possible that the jury were fully justified in their verdict, and, that the Court was right in upholding that verdict, but if the same question were to arise at the present day, such a decision might be altogether incorrect, for it is now notorious that persons using machinery frequently hire it, and, consequently, there is no presumption that machinery found on a manufacturer's premises belongs to him." It seems, therefore, clear, that where by the custom of the country, or the usages of the trade, it is a common practice to grant or take leases of moveable chattels, they will not pass to the trustee in bankruptcy of the lessee by simply being in his possession at the date of the bankruptcy. Thus, machinery affixed to the freehold of ironworks is not considered to be in the order and disposition of the bankrupt trader, where, by the custom of the country, when ironworks are let, such articles are furnished by and continue to be, the property of the lessor. (*Rufford* v. *Bishop*, 5 Russ. 346.)

The reputed ownership clause applies only to cases where goods are in the *sole* possession, order, or disposition of the bankrupt, so that, where two persons, L. and C., (who was an infant,) carried on the business of printers in partnership, holding the business premises under a lease to them both, by which some type was also demised to them, and L. alone was made bankrupt, it was held that this type, which was at the commencement of L.'s bankruptcy on the business premises, did not pass to the trustee under L.'s bankruptcy, being in the joint possession of L. and C. (*Ex parte Dorman, Re Lake*, 42 L.J., By. 20.)

Goods on the premises of a bankrupt at the time of his committing an act of bankruptcy are not in the possession, order, and disposition of the bankrupt, if at the date of the act of bankruptcy they are legally in the possession of the law. As, for instance, where they have been seized for rent (*Sacker* v. *Chidley*, 13 W.R. 690), or by the officers of excise under a claim for duty (per Pollock, C.B., *Ib.*), or, where the sheriff has seized them under an execution issued by a creditor. (*Ex parte Foss*, 2 De G. & Jo. 230.)

But a wrongful seizure will not remove the goods from the possession of the reputed owner. (*Barrow* v. *Bell*, 5 E. & B. 540.)

(3.) *That he must so have had them with the consent of the true owner.*—"In order to bring a case within the statute," said Parke, B., "there must be a real owner, distinct from an apparent owner, and the real owner must consent to the apparent ownership as such" (*Load* v. *Green*, 15 M. & W. 223); so goods and chattels which, at the time of the commission of an act of bankruptcy by a trader, are in his order and disposition, in fraud of, or against, or without the will of the true owner, are not within either the words or the spirit of the reputed

ownership clause. The true owner within the meaning of the Act is the purchaser or mortgagee, and the true owner, to give consent, must have a capacity for doing so, hence, the property of an infant is not within the statute, he not being capable of "consenting." (*Viner* v. *Cadell*, 3 Esp. 88.) Where goods are transferred into the bankrupt's possession or dealt with by him, without the knowledge of the true owner, the absence of permission and consent on the part of the real owner, will, of course, be implied, as if a carrier receives notice from the vendor to stop them *in transitu*, and yet delivers them by mistake to the vendee, who becomes bankrupt while they are in his possession, the goods are not in the order and disposition of the bankrupt *with the consent of the true owner*. (*Townley* v *Crump*, 5 Nev. & Man. 606.) And so, where the mortgagor in possession of a coal mine, machinery, barges, &c., leased them to a third party, who took possession, and put his own name on the barges, and subsequently became bankrupt, it was held that, the barges were not in the bankrupt's possession by consent of the true owner, (the mortgagee) since the mortgagor was in possession, merely on sufferance, and his consent did not satisfy the terms of the statute. (*Fraser* v. *The Swansea Canal Co.*, 1 Ad. & El. 354.) No consent of the true owner can be implied where such owner is ignorant of the existence of the property, or of his own right to it. (*Re Rawbone*, 3 Kay & J. 476.)

Where a trader executed a bill of sale of all his effects to the defendant, an auctioneer, who, shortly afterwards, by arrangement, entered the premises of the trader and endeavoured, *ineffectually*, to sell the goods by auction, and afterwards left the trader in possession until he committed an act of bankruptcy, it was held that, notwithstanding the attempted sale,

the goods were in the possession of the bankrupt as reputed owner, with the consent of the true owner, at the time of bankruptcy, and, therefore, passed to his assignees. (*Reynolds* v. *Hall*, 4 H. & N. 519.) But in this case, although the sale had been advertized, it did not appear that the goods were advertized to be sold as the goods of the defendant.

Should the true owner in due time, and in good faith demand the possession of his goods, his demand, though not complied with, is sufficient indication that he has withdrawn his consent to the possession of the goods by the reputed owner. (*Smith* v. *Topping*, 2 Nev. & M. 421; and see *Ex parte Ward*, L.R., 8 Ch. App. 144.) It may, indeed, be regarded as a general rule that, if the true owner be not guilty of neglect or imprudence, but does all in his power to prevent the goods from remaining in the bankrupt's possession, they will not pass to the trustee in bankruptcy. So, if the bankrupt have obtained goods, under such circumstances of fraud as would justify the vendor in rescinding the contract; or if goods, once properly appropriated to the use of the purchaser, have been afterwards, unknown to him, re-mixed with the rest of the bankrupt's stock, such goods will, in neither instance, be deemed in the bankrupt's possession with the consent of the true owner.

(4.) *That he must so have had them at the time he became bankrupt.*—By this, is meant the time of the committing of an act of bankruptcy capable of supporting the adjudication, though such act be prior to the act on which the adjudication is founded. The definition of the commencement of bankruptcy is contained in the 11th section of the Act, which is as follows:—

"The bankruptcy of a debtor shall be deemed to have relation back to, and to commence at the time

of the act of bankruptcy being completed, on which the order is made adjudging him to be bankrupt; or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at the time of the first of the acts of bankruptcy that may be proved to have been committed by the bankrupt within twelve months next preceding the order of adjudication; but the bankruptcy shall not relate to any prior act of bankruptcy, unless it be that, at the time of committing such prior act, the bankrupt was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in bankruptcy, and unless such debt or debts are still remaining due at the time of the adjudication." In Chapter V., acts of bankruptcy within the scope of the present work will be treated of more fully.

The statute does not, therefore, apply where the goods came into the possession of the bankrupt after the date of his bankruptcy. (*Lyon* v. *Weldon*, 2 Bing. 334.) Goods left with a trader "upon sale or return" are within his possession, order, and disposition, and pass to his trustee (*Livesay* v. *Hood*, 2 Camp. 83), but a buyer has a reasonable time to choose from goods sent him upon such terms, so that, where goods were thus sent to a buyer who committed an act of bankruptcy, the day after their arrival, and before the goods had been even unpacked, it was held that, they did not pass to the bankrupt's assignees. (*Gibson* v. *Bray*, 1 Moore 519.) But, it seems, the decision would have been otherwise, had he kept them so long as to furnish an inference of his election to take them. A fraudulent removal of goods, in contemplation of bankruptcy, will not alter the possession, but otherwise.

If the true owner can get possession of his goods at

any time before the commission of the act of bankruptcy by the reputed owner, the trustee in bankruptcy will not be enabled to disturb his possession. (*Hamilton* v. *Bell*, 10 Ex. 545.) But it has been held that a removal on the *same day*, but before the act of bankruptcy, will not take the case out of the statute. (*Arbouin* v. *Williams*, Ry. & M. 72.)

If, on an execution, the sheriff seizes goods of which the debtor is only reputed owner, a question arises, which is hardly yet settled, as to the effect of the seizure. If, after a formal seizure, a man is left in possession of the goods, but the trader is still allowed to use them, and so to carry on his business for a considerable time, the better opinion would appear to be, that there is no alteration in the reputed ownership, and that the trustee in bankruptcy would be entitled to recover. But it has been decided that, where the execution is conducted in the ordinary way of adverse levies, such a seizure withdraws the goods from the order and disposition of the reputed owner (*Ex parte Foss*, 2 De G. & Jo. 230), and in *Fletcher* v. *Manning* (12 M. & W. 581), Lord Wensleydale said that, "unless" the goods "were at the time of the act of bankruptcy in the possession and apparent ownership of the bankrupt, the assignees could not recover in that respect, and as they were seized by, and in the custody of, the sheriff at that time, it is very difficult to say that the bankrupt was then the apparent owner, if the execution was conducted in the ordinary way that an adverse execution is."

The effect of removing goods from the order and disposition of a bankrupt, after he has committed an act of bankruptcy, turns on the *bonâ fides* of their owner, and on his knowledge or ignorance of the act of bankruptcy; consequently, although a person's goods and chattels may be, with his consent, in the

order and disposition of a trader, who commits an act of bankruptcy, yet, if such person afterwards, *bonâ fide* and without notice of such act of bankruptcy, takes those goods out of the trader's order and disposition, they will be protected from the claims of his assignees. (*Graham* v. *Furber*, 14 C. B. 134.) And Lord Campbell, in *Brewin* v. *Short* (5 El. & Bl. 237), said, "if before the date of the fiat, and before notice of an act of bankruptcy, the true owner had *bonâ fide* demanded possession of his goods and, communicating with the bankrupt, had done that which would show that the goods did not longer, with his consent and permission, remain in the possession, order, and disposition of the bankrupt, we should hold, that the title of the true owner would not be defeated by a prior secret act of bankruptcy; but a mere intention to demand the goods and to get possession of them, we hold not to be a dealing or transaction within the meaning of this section of the Act of Parliament" (12 & 13 Vict., c. 106, section 133, re-enacted by section 94, sub-section 3, of the new Act,) *i.e.*, so as to take the goods out of the operation of the reputed ownership clause.

Holders of bills of sale, by way of security for a debt due, must notice that the Bankruptcy Act, 1869, section 40, provides that:—

"A creditor holding a specific security on the property of the bankrupt, or on any part thereof, may, on giving up his security, prove for his whole debt."

"He shall also be entitled to a dividend, in respect of the balance due to him after realising or giving credit for the value of his security, in manner and at the time *prescribed.*" (By the interpretation clause, section 4, "prescribed" "shall mean prescribed by rules of court, to be made as in this Act provided" *i.e.*, by section 78; see G.R., 78—81, and 99—101, 136, made accordingly, 1st Jan., 1870.)

"A creditor holding such security as aforesaid, and not complying with the foregoing conditions, shall be excluded from all share in any dividend."

Under this section it is clear that secured creditors cannot prove for their whole debts, without giving up, realising, or giving credit for the value of their securities, but, as bankrupt partners in trade have joint and separate properties, which are treated in bankruptcy as separate estates, a joint creditor may prove against the joint estate, without giving up any security he may hold upon the separate estates, and equally so where the debt is secured upon the joint property, but, of course, the creditor must not in any case receive more than twenty shillings in the pound.

If, therefore, the holder of a bill of sale or other security desires to present a petition for adjudication, he must state in his petition that, he will be ready to abandon his security for the benefit of the creditors, in the event of the debtor being adjudicated bankrupt, or, that he is willing to give an estimate of the value of his security. In the latter case, he will be allowed to become a petitioning creditor to the amount of the balance of his debt, after deducting the amount so estimated as the value of his security.

Another, and most important point that holders of bills of sale have to consider, is, that any transaction amounting to a fraudulent preference by the bankrupt of one creditor over others, is voidable at the election of the trustees, as contrary to the spirit of the bankruptcy laws.

The rule as to fraudulent preferences, has been known to the bankrupt law since the celebrated judgment of Lord Mansfield in *Alderson* v. *Temple*, (4 Burr. 2235,) in 1768, and has now received legislative recognition in the Act of 1869, section 92 of which enacts that:—

"Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts, as they become due, from his own monies in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying or suffering the same become bankrupt within three months, after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee of the bankrupt appointed under this Act; but this section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration."

Two things are necessary to constitute a fraudulent preference within this section:—

(1.) *The transaction must be the voluntary and spontaneous act of the debtor.*

"*Primâ facie* a trader who, on the eve of bankruptcy, hands over to a creditor assets which ought to be rateably distributed among all his creditors, must be taken to have acted in fraud of the law. But if circumstances exist which tend to explain and give a different character to the transaction, and to shew that the debtor acted from a different motive, these circumstances must be left to the jury; who should be told that, unless they come to the conclusion that the debtor had the intention of defeating the law, and preventing the due distribution of his assets, by preferring one creditor at the expense of the rest, the transaction stands good in law." (Per Cockburn, C.J.; *Bills* v. *Smith*, 34 L.J., Q.B. 68.) The whole question turns upon the intention of the trader in disposing of his goods to the particular

creditor. "And if," said the Chief Justice, in the same case, "the act was spontaneous on the part of the debtor, and there are no circumstances to rebut the presumption which arises from the act having been done purely voluntarily on his part, the jury should be told to infer that the preference was fraudulent and wrongful."

Upon the question whether the payment was voluntary or compulsory, the motives and state of mind of the bankrupt at the time of payment may properly be left to the jury.

So, where a bankrupt made a payment to defendant on the eve of bankruptcy, as *he* said, and as circumstances indicated, to benefit the defendant, and the defendant adduced evidence to shew that he had pressed for payment and had threatened to arrest the bankrupt, it was held that the assignee might recover the amount from the defendant. Tindal, C. J., said, "It has been argued, that wherever threat or importunity is resorted to, there cannot be voluntary payment. But that proposition is too constrained, and it must be left to the jury to say, whether the threat had *any operation* or not." (*Cook* v. *Rogers*, 7 Bing. 438.) But, although in some other cases of this sort it has been held, that pressure and importunity of the creditor will not prevent the act from being a fraudulent preference, yet this doctrine has been very much qualified by subsequent cases, the principle of which may be stated to be, that if there be a *bonâ fide application or pressure* for payment or security, on the part of some person having a right to apply (a request by a surety will be sufficient), and the act in any degree proceeds from such application or pressure, it is not entirely voluntary, and, therefore, is not a fraudulent preference.

Although a payment can only be *entirely* voluntary

when it originates from the bankrupt himself, yet if a creditor demand payment, *pressure* is not necessary to take it out of the class of voluntary payments (*Mogg.* v. *Baker*, 4 M. & W. 348), but where there is *pressure* it must have *operated* on the mind of the bankrupt in inducing him to make the payment. So, where frequent applications had been made to the bankrupt on the defendant's behalf, it was held, that the jury were properly directed to say whether the payment was made *in consequence* of such application. (*Cook* v. *Pritchard*, 12 L.J., C.P. 121.)

If the preference be made to secure the debtor from legal process, (*Alderson* v. *Temple*, 4 Burr. 2235,) or in consequence of a threat or apprehension of legal proceedings, however groundless (*Thompson* v. *Freeman*, 1 T.R. 155), or to avoid the enforcement of some legal right, as that to levy a distress (*Stevenson* v. *Wood*, 5 Esp. 200), the transaction cannot be regarded as purely voluntary, and, therefore, will not be a fraudulent preference. It may, indeed, be laid down as a general rule, that if anything be done to interfere with, or control the debtor's will, and it have that effect, the act will not be a fraudulent preference.

If the fraudulent preference be an *available* act of bankruptcy, it is, on the adjudication, immediately avoided by virtue of the relation back of the title of the trustee to the act of bankruptcy, but an assignment which cannot be avoided as an *available* act of bankruptcy, may yet be voidable by the trustee in bankruptcy, if there be *fraud in fact*. In the case of *Marks* v. *Feldman*, J., being indebted to the defendant in between £200 and £300, and to other creditors in about £170, *voluntarily* gave the defendant a bill of sale of all his goods, stock in trade, &c., with a power to enter and sell, if the amount owing were not paid

on demand. The defendant did enter and sell the goods, realizing less than the debt, and J. was subsequently adjudged bankrupt *on his own petition.* It was held by the Court of Exchequer Chamber, reversing the decision of the Court of Queen's Bench, that it was immaterial that the adjudication was on the bankrupt's own petition, so that the fraudulent preference was not void as an act of bankruptcy, to which the assignees' title could relate; that the assignees might still recover the proceeds from the creditor, inasmuch as a transaction amounting to a fraudulent preference is voidable at the election of the assignees as contrary to the spirit of the bankruptcy laws. (L.R., 4 Q.B. 481; S.C., L.R., 5 Q.B. 275.)

In *Marks* v. *Feldman*, there was fraud in fact; but where R., a trader in insolvent circumstances, *under pressure*, by bill of sale, assigned all his property to the plaintiff, a creditor, without intention to prefer, and was a few days afterwards adjudged a bankrupt on his own petition; it was held that, as the assignment could not be avoided as an act of bankruptcy, neither was it fraudulent and voidable by the assignees without fraud in fact. (*Jones* v. *Harber*, L.R., 6 Q.B. 77.)

(2.) *It must be made in contemplation of bankruptcy.* —It has been held, that a party who seeks to avoid a payment, or transfer of goods, on the ground that it was voluntarily made by a trader in contemplation of bankruptcy, must shew, not merely that the trader was insolvent when it was made, but, also, that he then contemplated bankruptcy. (*Morgan* v. *Brundrett*, 5 B. & Ad. 289.) But the true rule would appear to be, that if the condition and conduct of a trader be such as to clearly evince his contemplation that his embarrassments *must*, of necessity, end in *bankruptcy*, the jury will not be warranted in coming to any other conclusion than that the transaction is fraudulent.

But, inasmuch as every man has, down to the time of committing an act of bankruptcy, the sole right of dominion over his property, such a payment cannot be held to be a fraudulent preference where the bankrupt, at the time of making it, appears to entertain a *bonâ fide* hope or expectation that he may be extricated from his difficulties without being made a bankrupt. (*Gibson* v. *Boutts*, 3 Scott 229.)

The mere fact of a trader being in embarrassed circumstances does not, of course, prove that he contemplates bankruptcy. He may hope that his affairs will rally and come round. (*Green* v. *Bradfield*, 1 C. & K. 449.)

CHAPTER V.

Under what circumstances a bill of sale of chattels is an act of bankruptcy.

Although a bill of sale may be unimpeachable by creditors under the statute of Elizabeth, and may have satisfied all the requirements of the Bills of Sale Acts, there is yet another danger attending an assignment of this nature. It may be, itself, an act of bankruptcy, and regarded as fraudulent against creditors, within the policy of the bankrupt laws.

Having inquired, in the two last preceding Chapters, (1) when a bill of sale will be void under the statute 13 Eliz., c. 5, and (2) when the chattels comprised in a bill of sale will be saleable by the trustee in bankruptcy of the grantor, we must now consider the very different, but equally important question of, when a bill of sale will be deemed fraudulent, and void as an act of bankruptcy within the Act of 1869. This question, it has been said, may be answered in each case, by reference to one of the three following rules :—

(1.) Any transfer which is fraudulent within the meaning of the statute of Elizabeth is also fraudulent, and an act of bankruptcy under the Bankruptcy Act of 1869.

(2.) Any conveyance by a debtor to a creditor of his *whole* property, or of the whole with an exception *merely nominal*, in consideration of a bygone and pre-existing debt, although not fraudulent within the statute of Elizabeth, is fraudulent and an act of bankruptcy under the Bankruptcy Act of 1869.

(3.) A transfer by a debtor of *part* of his property to a creditor, in consideration of a bygone and pre-existing debt, although not fraudulent within the statute of Elizabeth, is fraudulent and an act of bankruptcy under the Act of 1869—*if made voluntarily, and in contemplation of bankruptcy, or if it otherwise have the effect of defeating or delaying his creditors.*

Having sufficiently considered the class of cases within the statute 13 Eliz., c. 5, (Chapter III.) it is now only necessary to consider the second and third of the foregoing rules.

The expression, "act of bankruptcy" is defined by the sixth section of the Bankruptcy Act of 1869, the first and second sub-sections of which are as follows :—

(I.) "That the debtor has, in England or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally.

(II.) "That the debtor has, in England or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof.

"But no person shall be adjudged bankrupt unless the act of bankruptcy on which the adjudication is grounded, has occurred within six months before the presentation of the petition for adjudication."

It may be as well to observe here, that in this statute the words "with intent to defeat and delay creditors" which were inserted in the corresponding section of former Acts have been omitted.

These two acts of bankruptcy, which, for the purposes of this work it is alone necessary to consider, are common to all debtors, traders or non-traders. (*Ex parte Luckes*, 41 L.J., By. 21.)

Although the Act of 1869 is the first legislative enactment, in which an assignment of the *whole* of a debtor's property to trustees for the benefit of all his

creditors, has been made *nominatim* an act of bankruptcy, it has introduced no new principle into our law. Judicial decisions had, from a very early period, established the same result by holding all such assignments, when made by a trader, fraudulent within the policy of the bankrupt laws, which, as we have seen, has invariably been to procure the equal distribution of the debtor's assets; and, indeed, it is obvious that the interests of creditors would frequently suffer, if debtors in insolvent circumstances were allowed to entrust the distribution of their assets to their private friends as trustees, who might, from personal considerations, be more disposed to favour the debtor than the creditor; and the same doctrine was applied to non-traders as soon as they became subject to bankruptcy by the statute of 1861 (24 & 25 Vict., c. 134), the seventieth section of which made a fraudulent conveyance, gift, delivery, or transfer of his real or personal estate, or any part thereof, by a non-trader, an act of bankruptcy: and it is clearly within the principle of what is called fraud upon the bankrupt laws, that, where the effect of a conveyance will be to put it entirely out of a debtor's power to go on with his business, or to meet his creditors, he must be taken to have intended the consequence of what he has done, and though, perhaps, not guilty of intentional fraud or what is called moral fraud, yet he is guilty of fraud against the policy of the bankrupt laws, by preventing, intentionally or otherwise, the equal distribution of his assets amongst all his creditors without preference or distinction.

In the well known case of *Young* v. *Waud* (8 Ex. 234), Mr. Baron Parke made some valuable remarks upon this point.—"Acts of bankruptcy," said that learned judge "arising from fraudulent assignments, are confined to acts of a fraudulent nature under the statute of

Elizabeth, with an immediate object to defeat creditors, to such as are fraudulent under the Bankruptcy Acts, being made with the object of preventing an equal distribution of the bankrupt's effects under his bankruptcy, which he knows must occur, and lastly, to those where there is a transfer of property which must necessarily, in its results, be known to the bankrupt to lead to the delay and disappointment of all the creditors, with the exception of that particular individual to whom the transfer is made; such a transfer is also an act of bankruptcy upon the principle that every man is bound to contemplate the necessary results of his own acts."

The recent Act, by express enactment, having made the execution by a debtor of such a conveyance or assignment, a distinct act of bankruptcy, there is no practical use in tracing the first decisions on a principle now so universally acknowledged.

To bring a bill of sale within the statute as an act of bankruptcy, a fraudulent intent on the part of the grantor need not be actually proved, or indeed exist. It is sufficient, if the circumstances are such as to warrant the inference of fraud. The dispositions of property which are fraudulent within the bankrupt laws, as tending to defeat or delay creditors, may be divided into three classes.

(I.) Those which affect the *whole* of the debtor's property.

(II.) Those which affect *part* only of his property.

(III.) Dispositions made in contemplation of bankruptcy, for the express purpose of preferring some particular creditor, and, which are known as acts of fraudulent preference. These have been, under that name cursorily, though, for our present purpose sufficiently, alluded to in the last Chapter.

(I.) *As to transfers affecting the whole of the debtor's*

property.—A conveyance by deed of all the effects of a bankrupt, under any circumstances, was in itself an act of bankruptcy under 1 Jac. I., c. 15, s. 2.

A conveyance by a trader of *all* his property upon trust either for a particular creditor (*Wilson* v. *Day*, 2 Burr. 827), or for a certain number of creditors (*Butcher* v. *Easto*, 1 Doug. 295), or of all to the exclusion of one (*Ex parte Foord*, cited 1 Burr. 477), is an act of bankruptcy. So, also, if the assignment of the whole of his property be in trust for *all* his creditors, although no actual fraud is intended, because, by executing such a deed, the trader necessarily deprives himself of the power of carrying on his trade, and unless all the creditors assent to such a deed, the property is put into a different course of application and distribution amongst his creditors to that which the bankrupt laws direct. (*Dutton* v. *Morrison*, 17 Ves. 199.) But to make such an assignment an act of bankruptcy a petition for adjudication must be presented, as we have seen, within six months from its execution. (32 & 33 Vict., c. 71, s. 6.) Such an assignment is an act of bankruptcy, even although, it has never been acted upon, or been out of the trader's possession (*Botcherby* v. *Lancaster*, 1 Ad. & E. 77), and if destroyed after execution before being acted upon, it still amounts to an act of bankruptcy. (*Lees* v. *Whiteley*, L.R., 2 Eq. 151.) But a creditor, who has acquiesced in the execution of such an assignment, and taken a benefit under it, cannot avail himself of it as an act of bankruptcy. (*Ex parte Stray*, L.R., 2 Ch. 374.)

The law that a conveyance of a man's whole property to secure a past debt, whether he be a trader or a non-trader, is an act of bankruptcy, has not been altered by the Bankruptcy Act, 1869. (*In re Wood*, L.R., 7 Ch. 302.)

A bill of sale of *all* a trader's effects and stock in trade, to secure an antecedent debt, is an act of bankruptcy, although there may be no actual fraud, on the principle, that, the very nature of the transaction is such as to prevent him carrying on his trade. (*Siebert* v. *Spooner*, 1 M. & W. 714.) Such a conveyance withdraws his effects from the reach of his other creditors and, as was said by Lord Mansfield in the leading case of *Worseley* v. *De Mattos* (1 Burr. 467), "must either be fraudulently kept secret or produce an immediate absolute bankruptcy." And it is immaterial that, at the time when the trader executed such a conveyance or assignment, he was pressed by the creditor in whose favour it is made (*Johnson* v. *Fesenmeyer*, 25 Beav. 88), or even that he was under arrest for a just debt, at the suit of the particular creditor, and that the deed was followed by immediate possession by the grantee. Thus, in *Newton* v. *Chantler* (7 East. 138), a trader, being under arrest at the suit of a creditor for a just debt, executed to him a bill of sale of *all* his effects to satisfy his debt, and pay over the surplus, if any, to the trader. It was held by the Court of Queen's Bench to be an act of bankruptcy. "As" said Lawrence, J., "the necessary consequence of this deed of conveyance was to take the whole effects of the trader, which the law says shall be distributed equally amongst all the creditors, and to give them to a particular creditor, this is, within all the cases, an act of bankruptcy and it is not the less the grant or conveyance of the bankrupt, to the prejudice of his other creditors, because at the time he made it he was under arrest at the suit of the defendant."

But, it seems that where the adjudication of bankruptcy is subsequently made on the debtor's *own petition*, such an assignment will not be *voidable* as an act

of bankruptcy in the absence of positive fraud. Thus, in a recent case R., a trader, under pressure, by bill of sale, assigned all his furniture and stock in trade to the plaintiff, a creditor, without fraud and without intention to prefer. R. was at the time insolvent and was, a few days afterwards, adjudged a bankrupt on his own petition. In an action by the plaintiff, however, it was held that, though the assignment was an act of bankruptcy, and would have been voidable as such, if the bankruptcy had been on the petition of a creditor, so that the title of the assignees would have related back to the act of bankruptcy, yet, as the bankruptcy was on the trader's *own petition*, and there was consequently no relation back, the bill of sale could not be avoided as an act of bankruptcy, and so, was not fraudulent and voidable by the assignees, *without fraud, in fact.* (*Jones* v. *Harber*, L.R., 6 Q.B. 77.)

An assignment by a trader of the *whole* of his property by way of indemnity, has been always held to be an act of bankruptcy (*Worseley* v. *De Mattos*, 1 Burr. 467), and so, likewise, a bill of sale of all a trader's effects, given as security to a surety for liabilities he had incurred on behalf of the trader. (*Leake* v. *Young*, 25 L.J., Q.B. 266.)

It is immaterial, that a bill of sale does not purport to transfer the whole of the debtor's property, if it does so, in fact. And so, where a trader gave a bill of sale of certain effects to the public officer of a banking company, to secure the amount due on his account, which was overdrawn, although the bill of sale did not, on the face of it, purport to assign all the debtor's effects, but, it appeared in fact, that he had no other property, and that the bank knew that such was the case, the deed was held to be an act of bankruptcy, and void against the assignees. (*Lindon* v. *Sharpe*, 6 M. & G. 895.) So, also, a merely

colourable exception of part of the effects assigned will not prevent the operation of the bankrupt laws in this respect. (*Wilson* v. *Day*, 2 Burr. 827.)

In the case of *Siebert* v. *Spooner* (1 M. & W. 714), Mr. Baron Parke said, "I take it to be perfectly well settled, that, where a trader makes an assignment of all his effects, or of all except a very small portion, it is necessarily an act of bankruptcy, without any actual fraud." Thus, where a trader gave a bill of sale of all his property, except his furniture and book debts, to a creditor as security for a previously existing debt, it was held that, notwithstanding the reservation, the deed was fraudulent and void, inasmuch as it placed the bulk of the trader's property out of the reach of his other creditors. (*Ex parte Foxley, in re Nurse*, L.R., 3 Ch. 515.) And where a trader gave a bill of sale of his stock in trade to A., in consideration of his indorsing a bill which the trader discounted, but the bill of sale was not registered, and nine months afterwards he executed an assignment of the bulk of his property to A., to secure the same debt and further advances, it was held that the assignment, being otherwise fraudulent, could not be supported on the ground that, it was a substitution for the first bill of sale. (*Ib.*)

Where a debtor executed, as security for an antecedent debt of £1,500, a bill of sale which included all his property of any appreciable value, except a small pension, to which he was entitled as a retired servant of the East India Company, it was held that, as the pension would not pass to his trustee in bankruptcy, and could not be taken in execution by a creditor, it constituted no substantial exception from the assignment, which, being an assignment of substantially the whole of the debtor's property, was an act of bankruptcy. (*Ex parte Hawker, in re Keely*,

L.R., 7 Ch. 214.) In another recent case, a trader assigned by bills of sale all his goods, effects, and stock in trade, valued at £600, in consideration of £55, advanced immediately *before* the execution of the deed. No amount was advanced on the date of the assignment, which was held to be an act of bankruptcy. (*Ex parte Cohen, in re Sparke*, L.R., 7 Ch. 20.)

In all these cases the debtor obviously gains nothing by the transaction, that will assist him in carrying on his business, or meeting his creditors, and he places himself and the whole of his property at the mercy of a particular creditor, with the effect of obstructing his other creditors in their legal remedies. But, while an assignment by a trader in insolvent circumstances of all his stock in trade, is an act of bankruptcy, it is not absolutely essential, in order to make it an act of bankruptcy, that it should prevent the trader from carrying on his trade. If the effect of the deed be to delay creditors, it may yet be an act of bankruptcy. This proposition is well illustrated in the following case:—

G., a farmer, by bill of sale conveyed all his property, except two shares in a joint stock banking company, (the property being worth about £3,000) to secure a debt of £900, and the assignment did *not* prevent his trading as before: but, nevertheless, it was held to be an act of bankruptcy, inasmuch as, although the grantee would be trustee for G., as to the amount beyond his own debt, yet, as the property could not be taken in execution, the effect was to delay the creditors. "The true question is not" said Parke, B., "whether the deed stops the trader's business and makes him cease his trading, but whether it makes him insolvent and unable to pay his creditors in the ordinary way." (*Smith* v. *Cannan*, 22 L.J., Q.B. 290, Ex. Ch.) And

following this case it appears to be perfectly settled law, that a bill of sale of *all* a debtor's property although by way of mortgage, and although the property transferred be a great deal more valuable than the amount of the debt to secure which, it is transferred, is nevertheless deemed a fraudulent transfer within the meaning of the Bankruptcy Act, because it delays, and may defeat the other creditors in their legal remedies against him.

But those who rely upon such an act of bankruptcy, at the trial must show, that it was calculated to have the alleged effect, by evidence of the general state of the debtor's affairs at the time of giving such bill of sale. It is not sufficient that, under pecuniary pressure, the bankrupt parted with some articles essential to the carrying on of his business; as, for example, where a miller transferred his waggon and horses to a creditor who had arrested him. (*Wedge* v. *Newlyn*, 4 B. & Ad. 831.) A conveyance by a trader of all his effects in a given place is not an act of bankruptcy, unless it be shown that he had no other property (*Chase* v. *Goble*, 2 M. & G. 930), and the onus of proving this is on the trustee.

The only case in which a conveyance by a trader, being indebted, of *all* his property and effects is *not* an act of bankruptcy, is where he or his creditors obtain an equivalent. "It may be" said Cockburn, C.J., in *Woodhouse* v. *Murray* (L.R., 2 Q.B. 634), "that the trader gets less than the value of the property he parts with. It may be that, under the pressure of some extraordinary exigencies, the trader, with an honest object of saving himself from bankruptcy and ruin, with a view to his own benefit and that of his creditors, and with an honest and *bonâ fide* desire to carry on his trade, pledges his effects, even the whole of them, to realize a sum of money which may fall

very far short of their value, yet, looking at all the circumstances, it is so plain the intention was an honest one, not to get a sum of money to put into his pocket, but to carry on his business, that such an assignment of all his effects would not be considered an act of bankruptcy. There must, however, be an equivalent in the transaction, or it would be void, as being contrary to the policy of the bankrupt law, and amount to an act of bankruptcy."

A distinction must be observed between an assignment by a debtor of all his effects for the benefit of his creditors, or for securing a pre-existing debt; and an assignment of all his property for a valuable consideration, which is clearly not fraudulent by itself. As was said by Lord Kenyon in the case of *Whitwell* v. *Thompson* (1 Esp. 72), "All the cases, without a single exception, where the assignment of his property by a trader has been deemed fraudulent and an act of bankruptcy, have been where it has been given for a bygone and before contracted debt: but it never can be taken to be law, that a trader cannot sell his property when his affairs become embarrassed, or assign them to a person who would assist him, as a security for any advance such person might make to him. And so, a bill of sale, given to his bankers by a trader to cover future as well as past advances, and not made in contemplation of bankruptcy, is not an act of bankruptcy. (*Carr* v. *Burdiss*, 1 Cr., M. & R. 443.)

It follows that, where there is a sale by a trader of all his stock in trade and effects, or by a non-trader of all his goods and chattels, to a *bonâ fide* purchaser for a fair and reasonable price, the transaction cannot be avoided as an act of bankruptcy, and any person who seeks to treat the sale as an act of bankruptcy must show some fact, from which fraud may be

inferred. (*Rose* v. *Haycock*, 3 Nev. & M. 645.) For, when the purchaser pays a fair price for the goods, the debtor receives an equivalent for his property, the effect of the transaction being merely to change the form of that property, and it is then even immaterial that the debtor intended at the time of the sale to abscond and misapply the purchase money, provided that the buyer at the time of his purchase be ignorant of the trader's design, and have no reasonable ground to suspect that he means to appropriate the money to himself in fraud of his creditors. (*Baxter* v. *Pritchard*, 1 Ad. & El. 456.) For the epithet "fraudulent" is to be confined to the gift, transfer, or delivery, and does not extend to the projects which possibly the debtor may entertain as to the disposal of the purchase money. (Per Lord Denman, C.J., Ib.) A *bonâ fide* sale by a trader of the whole of his effects for an equivalent which is paid to him, and with which he may deal, is obviously not such an assignment as necessarily puts it out of his power to continue his trade, and is not of itself an act of bankruptcy. But in *Mercer* v. *Peterson* (L.R., 3 Ex. 104), Cockburn, C.J., said, "It is too late to question the propriety of the decisions to that effect, although, I fear that where a trader makes over his whole estate, even for a fair equivalent, and even although he really have a *bonâ fide* intention of going on with his business, in the end the present advance is too often dissipated, and the creditors receive no benefit from it."

The courts will not look very closely to the adequacy of the price, if the vendor endeavoured to obtain the most remunerative price he could in the way of business at the time of sale. So, where a retail draper bought on credit at different times, large quantities of goods, and about three months after commencing such purchases, re-sold the goods for money, part at one

time, and part at another, during the six following months, for about half the cost price of the articles. The sales were real sales—the trader and the buyer (the defendant), each trying to make the best bargain that he could for himself, and the trader's object appeared to be to raise money to pay his creditors. He afterwards became bankrupt, in consequence of this reckless course of dealing, and it was held that such sales were not fraudulent transfers, and, consequently, not acts of bankruptcy within the meaning of the statute. (*Lee* v. *Hart*, 25 L.J., Ex. 135.)

On the other hand, a sale of goods at such a price, and under such circumstances, that the purchaser ought to know that the trader is selling, to raise money in fraud of his creditors, for his own purposes, is an act of bankruptcy, and the buyer is liable to the assignees in trover for the value of the goods. (*Cook* v. *Caldecott*, 1 Moo. & M. 522.) Thus, if a trader raises money by selling his goods at an undervalue (not for the purpose of carrying on his business, but in contemplation of stopping payment and for the purpose of cheating his creditors,) to one who has notice, either by express information, or from the nature of the transaction, that the trader is selling his goods, not in order to carry on his business, but with a fraudulent intention, the sale is an act of bankruptcy and void, and the trustees may recover the goods or their value from the purchaser. (*Fraser* v. *Levy*, 6 H. & N. 16.) The result will be the same, if the transaction is not a really *bonâ fide* sale but a mere contrivance to give a preference to the pretended purchaser. (*Rust* v. *Cooper*, Cowp. 629.)

Where there is an assignment by a trader of all his property and effects for a present advance of part of their value, and the advance bears a substantial proportion to the value of the property, and the assign-

ment is sought to be avoided, the court "must be satisfied that there exists an intention to defeat and delay, and consequently to defraud the creditors, and that object must be the object not only of the bankrupt, but also of the party who is dealing with him." (Per Mr. Justice Willes, *Pennell* v. *Reynolds*, 11 C.B., N.S. 722.)

What amount may or may not constitute a *substantial* advance, sufficient to support the bill of sale, must depend on the circumstances of each particular case.

In *Pennell* v. *Reynolds* (11 C.B., N.S. 709), the fresh advance was £250, and the goods conveyed sold for £515. The court held that the advance was sufficient in the absence of fraud to prevent the deed being necessarily an act of bankruptcy, but ordered a new trial, in order that the opinion of a jury might be taken upon the question as to whether there was fraud in fact.

In *Mercer* v. *Peterson* (L.R., 2 Ex. 304; S.C. 3 Ex. 104), the old debt was £107, the fresh advance was £64, and the value of the property conveyed £115. It was held by the Court of Exchequer Chamber, affirming the judgment of the Court below, that the sum of £64 was a fair present equivalent for the assignment by the trader of his goods, and that the bill of sale was not void as an act of bankruptcy.

In *Lomax* v. *Buxton* (L.R., 6 C.P. 107) the past debt was £161, and the fresh advance £250; the value of the property conveyed did not exactly appear, but could not have been much, if any, more than would suffice to cover the advance, and the bill of sale was held not to be an act of bankruptcy.

In *Allen* v. *Bonnett* (L.R., 5 Ch. 577) the antecedent debt was £450, and the present advance £300. In this case also, the value of the property conveyed is

not reported; but the bill of sale was supported not merely on the ground that there was a sufficient present advance, but also, because seventeen months had elapsed between the execution of the deed and the grantor's bankruptcy, and it was, therefore, too late to rely on the execution of the bill of sale as an act of bankruptcy.

In *Ex parte Fisher, Re Ash*, (L.R., 7 Ch. 636) the pre-existing debt was £600, the fresh advance was £100, and the property comprised in the bill of sale afterwards sold for £718. It was held that the bill of sale *was* an act of bankruptcy and so void against the creditors. But in this case it was not laid down as a matter of law, that, the smallness of the amount of the advance, necessarily made the bill of sale an act of bankruptcy, but the Lords Justices considered that it afforded strong evidence that the principal object of the parties in the whole transaction was not to enable the bankrupt to continue his trade, but to secure the repayment of the past advance.

Where a bill of sale is granted by a debtor, and the consideration is not an equivalent which is paid to him, and with which he may deal, the courts will more strictly inquire into the adequacy of the consideration, and, as to whether it is likely to defeat or delay creditors. So it was in the following often quoted case: Leake, a trader, being embarrassed, had summoned a meeting of his creditors, and requested B. to become surety for the payment of a composition he proposed to offer, and B. consented to do so for ten shillings in the pound, but verbally stipulated that Leake should give him security over all he had. At the meeting, B. not being present, the creditors agreed to accept twelve shillings in the pound, but Leake did not inform them that B. had stipulated for the security for himself. Under the composition deed

three bills, of £16. 10s. each, were given to one of the creditors for the amount of his debt, which were drawn by Leake, and accepted by B. The first of these bills was dishonoured at maturity, and the creditor having indorsed it over to his agents in London, they commenced an action in their own names against B. for the amount, and an action against Leake, in the name of their principal, for the amount of the original debt, less the amount of the bill indorsed over to them. The creditor obtained judgment, and issued execution in his action, but Leake had, under pressure from B., previously executed a bill of sale of all his property to him. The court held that, the bill of sale to B. was an act of bankruptcy, being an assignment of *all* the trader's property, and not being for such an equivalent as to make it not necessarily delay his creditors. (*Leake* v. *Young*, 5 El. & B. 955.) "A transaction," said Lord Campbell, in delivering judgment in this case, "whereby the property is conveyed to secure a surety against liabilities which he has incurred to the particular creditors, who may come in, and which surety can stop the trade at any moment, is not, in our opinion, a case where the bankrupt receives an equivalent which he can deal with in carrying on his trade if he chooses within the doctrine of *Rose* v. *Haycock*, and *Baxter* v. *Pritchard*, (*ubi supra.*) The whole power is entirely taken out of the hands of the bankrupt, and his trade may be stopped at any moment, at the will of the assignee, while he is to receive nothing, and no part of the property, or its proceeds is under his control, but, the whole is in effect to be applied to secure a creditor, who is to pay instalments to the particular body of creditors, who have come in and agreed to receive his acceptances. It seems impossible to us, to treat such a transaction, as one where the trader obtains an

equivalent, within the principle of the cases on which the plaintiff relies; and we, therefore, on principle, as well as authority, give our opinion, that the deed in question was an act of bankruptcy."

It will have been gathered from the preceding cases, that, an assignment of all a trader's effects to secure a present advance, or present and future advances, or future advances, honestly made, or to be made, for the purpose of enabling him to carry on his business, or, to secure an advance to enable him to satisfy a pressing demand, and thus, to continue his business, is not, of itself, an act of bankruptcy; for as long as the assignment is in consideration of a substantial advance, either of money or money's worth, it stands on the same footing as an assignment of all, with a *substantial* exception, which is, likewise, not an act of bankruptcy: and it will not be so where there is no fraudulent intent, even though the effects assigned far exceed in value the amount of the advance, for it is known to every man engaged in commerce, that, a comparatively trifling sum of ready money may enable a trader to retrieve his affairs, and so prove of the greatest benefit, not only to himself but to his creditors; and that a difficulty that would often wreck a business, being disposed of by a little timely help, the trader is enabled to gain time, which may be of vital importance to him.

In *Whitmore* v. *Claridge* (33 L.J., Q.B. 87), a trader was pressed by two creditors, one of whom had a bill of sale on part of his property, and the other creditor an execution on the rest of his goods. The debtor applied to Claridge to assist him, and in consideration of Claridge agreeing to pay off the two creditors, assigned to him by bill of sale all his estate and effects. Claridge paid off the creditors, and it was held, affirming the decision of the Court

below, that, the bill of sale was not an act of bankruptcy, as it was not in consideration of a past debt only, but an assignment in consideration of the assignee's releasing the trader's property from a charge already laid upon it.

In *Bittlestone* v. *Cooke* (6 E. & B. 296), B., a carpet manufacturer, had agreed with defendants to consign his manufactured stock to them as his factors, for sale, and they made advances to him, partly in cash, and partly by acceptance. In order to reduce the balance due to his bankers, B. consigned part of his stock of raw yarns to the defendants, and they made advances upon them. It was agreed that defendants should advance him from £500 to £800 to meet his payments, and bills coming due, and that, he should give them a bill of sale as security for that and other advances, not to exceed in the whole £1,800. When the deed was executed, it was known that B. would require more than £500 to be immediately advanced, and the bill of sale recited, that, B. *was* in debt to the defendants in the sum of £500; as if that sum had been already advanced. The whole of B.'s stock in trade, value £6,000, was assigned. The defendants made advances to B. in pursuance of the deed, until the 8th February. On the 16th, they took possession under the bill of sale, and subsequently, on the same day, B. signed a declaration of insolvency, and, on the 18th, was adjudged a bankrupt. It was held, that, the deed being a security for future advances, and made *bonâ fide* to enable B. to carry on his business, and not to defeat or delay his creditors, was not an act of bankruptcy, for the advances, if bearing a small proportion to the amount of property pledged might yet be of more advantage to the trader and his creditors, than the property itself.

An assignment, therefore, by a trader of all his property as security for an advance of money which he may afterwards apply in payment of existing debts, is not necessarily fraudulent and an act of bankruptcy within the Bankruptcy Act. In order to make such an assignment fraudulent, the lender must be aware that the borrower's object was to defeat or delay his creditors, and such an assignment cannot be an act of bankruptcy, unless it be also void as being fraudulent. (*In re Colemere*, L.R., 1 Ch. 128.)

In illustration of the now established rule that a bill of sale to secure an advance, even though it comprise the debtor's whole property and contain a power to seize after acquired property, is not necessarily an act of bankruptcy, is the well known case of *Hutton* v. *Cruttwell* (1 E. & B. 15), where a trader, being indebted to L. in £200, agreed with the defendant, upon his paying the £200 to L., to assign all her effects to him by a bill of sale, to secure the £200; a bill of sale was accordingly executed some months after, containing a power for defendant to enter and take all the effects which then were, or at any time during the continuance of the security might be, on the premises, and sell them and repay himself the £200, and interest and pay expenses of sale, and pay the residue to the grantor. The grantor covenanted to pay the £200 by instalments, and was to remain in possession until default in payment. She subsequently sold the effects for £567, and paid the £200 to defendant, and afterwards became bankrupt, and her assignees sued defendant to recover the £200, relying on the bill of sale as an act of bankruptcy and fraudulent against creditors. But it was held that, the execution of the deed was not necessarily in itself an act of bankruptcy, for the transaction was, as if the deed had

been executed at the time of the payment, by defendant to L., which constituted a good consideration between the grantor and defendant, and the clause enabling the defendant to sell after acquired property, did not vitiate the transaction. The payment of the £200 to L., by the defendant, was an advance to the assignor to enable her to carry on her business, and she derived the full benefit of the whole sum advanced.

Carrying this principle still further, a bill of sale, including not only all existing property, but also all after acquired property, in consideration, *partly of an existing debt*, and partly of a present advance, will not be an act of bankruptcy, if the debtor really get a fair present equivalent, or some substantial benefit from the money or goods advanced.

So, where a trader, being indebted to the defendant, gave him his acceptances for the amount of the debt. Three days before the acceptance was due, he agreed to give the defendant a bill of sale on all his effects and stock in trade, in consideration of the defendant taking up the acceptance, and to cover any further advance which might be made to him by the defendant. The defendant, accordingly, took up the acceptance, and afterwards lent an additional sum of £64 to the trader, upon the understanding that it should be included in the bill of sale. A bill of sale was subsequently executed, in pursuance of the agreement, whereby, the whole of the trader's personal estate, of which he was then, or should in future become possessed, was assigned to the defendant, as security for the debt due from the trader to him. The trader's property was worth about £115. Less than twelve months from the date of this bill of sale, but more than twelve months from the agreement to give it, the trader became bankrupt. In an

action of trover, by his assignee in bankruptcy, against the defendant, for the goods comprised in the bill of sale, some of which had been acquired after the agreement, it was held by the Court of Exchequer Chamber, affirming the decision of the Court below, that the sum of £64 was a fair present equivalent for the assignment by the trader of his goods, and that the bill of sale, therefore, conferred on the defendant a good title to them, as against the plaintiff. (*Mercer* v. *Peterson*, L.R., 3 Ex. 104.)

In a recent case, a bill of sale, including all the existing property of a trader, and containing a power to seize all after acquired property, except farming stock, was made by him in favour of a creditor in consideration, partly of an existing debt, and partly of a sum advanced by such creditor, to enable him to satisfy the claim of another creditor secured by a previous bill of sale over the same property, and thus to redeem the property which had been already seized under the prior bill of sale. More than twelve months after the date of the previous bill of sale, proceedings were taken for a liquidation of the debtor's affairs, by arrangement under the 125th section of the Bankruptcy Act of 1869, and a trustee was appointed, and the Court held that, the latter bill of sale was not an act of bankruptcy. (*Lomax* v. *Buxton*, L.R., 6 C.P. 107.)

A bill of sale, comprising all the debtor's property, as security for an existing debt arising from a loan previously made, will not be an act of bankruptcy if it be made in performance of an agreement entered into at the time of the loan. So, where a trader, indebted to several persons, procured from A. an advance of £200, for which he verbally agreed to give a bill of sale of all his property, if called upon to do so. On receiving the money, he gave to A.

a promissory note for £200, a memorandum of agreement to assign some property expectant on the death of his wife's father, together with a policy of assurance, and, also, another memorandum of agreement to pay £10 yearly as a bonus. At a later period, on being requested, he executed a bill of sale of all his property to A. It was held by the Court of Exchequer, that such bill of sale, having been executed in pursuance of the original agreement, was not an act of bankruptcy. (*Harris* v. *Rickett*, 28 L.J., Ex. 197.)

Where a sum of money is advanced upon the faith of a promise by the borrower to give a bill of sale of his property as security to the lender, the sum so advanced will be considered as advanced upon the security of the bill of sale; but the promise must be an absolute one. (*Ex parte Fisher, Re Ash*, L.R., 7 Ch. 636.)

An insertion in a bill of sale, knowingly, of a wrong sum, does not necessarily invalidate the security, as against creditors, if done without fraud, and with the intention of making the security available, only to the extent of the sum actually due. (*Biddulph* v. *Goold*, 11 W.R. 882.)

(2.) *As to transfers affecting part only of the debtor's property.* — An assignment of a *part* merely of a trader's effects, even on account of a pre-existing debt, does not, like an assignment of the *whole*, contain within itself the evidence of a fraud. (*Balme* v. *Hutton*, 2 Y. & J. 101.) A debtor may lawfully assign specific portions of his effects in payment of, or to secure, a particular creditor (*Hooper* v. *Smith*, 1 Wm. B. 442), provided, of course, that such an assignment is not manifestly and actually fraudulent; as, for instance, when made expressly to prefer the particular creditor at the expense of all the other

creditors. (*Pulling* v. *Tucker*, 4 B. & Ald. 382.) "A conveyance of a *part* may be public, fair, and honest, for, as a trader may sell, so he may openly transfer many kinds of property, by way of security; but a conveyance of all must either be fraudulently kept secret, or produce an immediate absolute bankruptcy." (Per Lord Mansfield, *Worsley* v. *De Mattos*, 1 Burr. 467.) At the same time a conveyance, by a debtor, of part of his property *in contemplation of bankruptcy*, with intent to defeat and delay or defraud his creditors, will be void as an act of bankruptcy; as, for instance, where a trader gave a bill of sale of one-third part of his effects, in consideration of a loan of £120, two days before he absconded; the bill of sale was held to be an act of bankruptcy (*Linton* v. *Bartlet*, 3 Wils. 47); but it will be otherwise, if it be made *bonâ fide*. (*Manton* v. *Moore*, 7 T. R. 67.) As we have seen, if the bill of sale be, in fact, a conveyance of all the effects, with only a colourable exception of part, it will be deemed an act of bankruptcy (*Compton* v. *Bedford*, 1 Wm. B. 362), as, in effect, an assignment of the whole. As a general rule, an assignment,—not of the whole of a debtor's property, nor of the whole with a colourable exception—but of a part only, to secure a pre-existing debt, is not, in the absence of positive fraud, an act of bankruptcy.

The principle, in the case of traders, appears to be that, if the transaction is *bonâ fide*, and does not involve consequences injurious to the trader's solvency, it will not be an act of bankruptcy; but if, on the other hand, the transaction is inconsistent with the rational possibility of a continuance of the debtor's trade, and the debtor knows that all chance of his continuing in trade, fairly or substantially, or otherwise than colourably, is gone, then the transaction will be an act of bankruptcy.

An assignment under pressure by a trader to certain creditors, not of the whole of his property, but with a substantial exception, is not an act of bankruptcy; so, where a trader, under pressure, assigned to two creditors, who were aware of his insolvency, his household furniture, stock in trade, and goods, chattels, and effects in his dwelling-house, which, on their sale, realized £193, and the trader also had book debts and tea in bond of the value of £93, it was held in the Exchequer Chamber (affirming the judgment of the Court of Exchequer), that the assignment was not an act of bankruptcy. Wightman, J., said: "No doubt, an assignment of the whole of a trader's property is an act of bankruptcy, because the necessary effect of it is to defeat and delay his creditors. For the same reason, an assignment, with a colourable exception of part only, is an act of bankruptcy, for it is, in effect, an assignment of the whole. In the present case, however, the portion omitted was not merely a colourable exception, because it appears that it produced, when realised, about one-third of the whole of the trader's property. It must, therefore, be taken as an assignment of a part only of the property, and that was assigned under pressure. It has been decided, in several cases, that a *bonâ fide* assignment by a trader of part of his property, in consesequence of pressure, is not an act of bankruptcy." (*Smith* v. *Timms*, 32 L.J., Ex. 215.)

The case of *Hale* v. *Allnutt* (25 L.J., C.P. 267) is a striking illustration of the same principle. There, a licensed victualler was indebted to B. in £570, for goods sold and money advanced. Being pressed for payment, as an inducement for forbearance on the part of B., A. executed a deed, whereby he mortgaged to him the public-house in which the business was carried on, and assigned to him, by bill of sale, all

his trade and other fixtures and household furniture, with a power of sale, in case of default, in payment of the debt and interest, by certain instalments, extending over a period of several months. The value of the property mortgaged, constituted about a third part of the assets, while the debts altogether amounted to above three times the assets. A. continued his business nearly three months, when he became bankrupt; having, in the meantime, received further supplies of goods and advances of money from B., and made various payments to other creditors. It was held that the execution of the deed was not an act of bankruptcy; the assignment not being of the whole (or the whole, with a colourable exception) of A.'s property, and the defeating or delaying of creditors, by producing absolute present insolvency and incapacity to carry on trade, not being its necessary result; nor was the deed void as a fraudulent preference of B., it being the result of pressure on his part, and not a voluntary conveyance on the part of A.

If the effect of the assignment is such that, if operated upon, it must immediately stop the grantor's trade, it will generally be deemed an act of bankruptcy.

In the case of *Stanger* v. *Wilkins* (19 Beav. 626), A., a trader, being indebted to B., another trader, assigned to him certain property to secure the debt. A. was either actually insolvent at the time, or in such circumstances, that the enforcement of the provisions of the deed would have stopped his business at once, and both A. and B. knew that it was only by preserving the goodwill, and by careful management, that A. could possibly hope to pay his debts, for which time and the forbearance of B. were necessary. A. certainly, and probably B. also, knew that the former was insolvent. B.'s debt, however, was

bonâ fide, and the security was executed under *bonâ fide* pressure, and contemplated the continuance of the business by A., and his ultimate extrication from his difficulties by the aid of B. This deed was set aside, the present Master of the Rolls saying: "In the case before me, substantially the whole of the property of the trader was assigned. He was also, in my opinion, insolvent at the time; the effect of the assignment was such, that, if operated upon, it must have immediately stopped the trade, have destroyed the goodwill, have produced a great deficiency of assets to pay the trader's creditors, and have given to the assignee, under that deed, a great advantage over them. All this was known to both parties to the deed, at the time, unless they chose wilfully to shut their eyes to the necessary consequence of what they were about, and these facts, which I consider to be established by the evidence, are, in my opinion, sufficient to invalidate the deed."

An assignment of part of a debtor's property, although the rest is large, will be an act of bankruptcy, if it be accompanied at the time by such circumstances of insolvency that, the general body of the creditors are defeated and delayed in the manner of distribution, according to the bankruptcy law. (*Ex parte Wensley*, 32 L.J., By. 23.)

On the same principle was decided another case, where a debtor, in consideration of a bygone debt of £230, by a bill of sale assigned to the defendants certain property, amounting to £160. He had also other property, consisting of an equity of redemption, valued at £150, and book debts to the amount of £50, of which £22 were good. His debts amounted to £1,100, of which £600 was due to the defendants, and the residue to other creditors. At the time the deed was executed, the debtor was in-

solvent, and the defendants knew it; and they also knew that, if they put the deed in force, it would prevent the debtor from carrying on his trade. The deed was put in force by the defendants, and the debtor's trade was stopped. It was held that the assignment was an act of bankruptcy, as the defendants, by putting the deed in force, prevented the continuance of the trade, and thereby necessarily defeated and delayed creditors. (*Young* v. *Fletcher*, 34 L.J., Ex. 154.)

An assignment of the machinery and effects of a trader, necessary for carrying on his trade, and comprising all his property, except his household furniture and book debts, which were of small value, he being at the time in insolvent circumstances, was held an act of bankruptcy, the Lord Justice Turner saying: "This case appears to me to combine within itself all the materials which, in the reported cases, have been held to constitute the execution of such an instrument as the one before us, an act of bankruptcy. There is an assignment of nearly all the property of the bankrupt; of the machinery by which alone his trade could be carried on, for securing a pre-existing debt." (*Ex parte Bland, Re Murgatroyd*, 6 De G., M. & G. 757; and see also *Goodricke* v. *Taylor*, 2 De G., J. & S. 135.)

But, it must not be forgotten, that the mere fact that the assignment has the effect of preventing the trader from carrying on his business, will not alone render the deed invalid; as, for example, if the debtor have other substantial property, not comprised in the bill of sale, and, generally, if he be not thereby rendered insolvent; for, where a trader assigns part of his property by way of mortgage, the most important question, under the bankruptcy laws, is not, whether putting the deed in force will paralyse and stop the business, but whether it will make him insolvent.

A manufacturer assigned all his machinery, by way of mortgage, to secure the amount of certain bills drawn by him, and accepted by the consignees of his goods, which had been discounted by the mortgagee, and also of such other bills, as should, from time to time, be discounted in like manner. The mortgagee was empowered, after three days' notice, to enter and take possession of all the machinery, and, after a sale of the same, to pay the amount of the expenses, and the bills then due or recurring, and to pay the surplus to the mortgagors. At the time of the execution of this deed, the machinery was worth £1,500, and the mortgagor's property consisted of goods £1,100, and good debts £900; while his whole liabilities were £2,900. It was held, that this deed was no evidence of an act of bankruptcy, although, had it been acted upon, the mortgagor could not have carried on the particular business in which he was engaged. (*Young* v. *Waud*, 22 L.J., Ex. 27.) Mr. Baron Parke said: "The question is not whether the result of the assignment being acted upon would be to disable him from carrying on his trade, but whether he would thereby be rendered insolvent."

In judging, therefore, of the validity of a bill of sale of part of a debtor's property, given to secure a pre-contracted debt, it will be most important to consider, not merely the description of the property comprised in the bill of sale, but, its relative proportion to the debtor's other property, the general state of his pecuniary affairs, and whether insolvency is a necessary consequence of the transaction; and this principle is applicable to traders as well as non-traders. Even if the bill of sale be not fraudulently intended, ask the question, will it delay or defraud the other creditors? it is obvious that any assignment by way of security must remove property to some extent out of the power

of the other creditors, but the question in each case appears to be, whether the circumstances are of such a nature as to constitute the transaction a fraudulent interference with the rights of other creditors, and whether, by reason of such transaction, the debtor, being rendered insolvent, will be unable to meet his liabilities.

CHAPTER VI.

On the registration of bills of sale.

Assuming the *transaction* embodied in a bill of sale not to be invalid by reason of any of the matters mentioned in the three last preceding Chapters, there still remains one formality to be observed, for perfecting the bill of sale *as an instrument*, namely, registration in accordance with the provisions of 17 & 18 Vict., c. 36. Before the passing of this statute, the question in ascertaining the validity of a bill of sale was, whether the transaction was *bonâ fide*, or made with intent to defeat the creditors of the person making it, and the apparent possession itself raised a presumption of fraud. The legislature not, however, (as appears from the preamble of the Act) considering this a sufficient safeguard against possible frauds, has provided for the registration of bills of sale as a further security to creditors, not, be it observed, for giving any additional force or validity to the instrument as an assurance, but for making it more a matter of notoriety.

The statute 17 & 18 Vict., c. 36, recites that "frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors,"

and, in section 1, it enacts as follows :—"Every bill of sale of personal chattels made after the passing of this Act (10th July, 1854), either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of such bill of sale, or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, or, in case the same shall be made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness to such bill of sale, be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench, within twenty-one days after the making or giving of such bill of sale (in like manner as a warrant of attorney in any personal action given by a trader, is now by law required to be filed) otherwise such bill of sale shall, as against all assignees of the estate and effects of the person whose goods, or any of them, are comprised in such bill of sale under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all sheriffs' officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any court of law or equity authorising the seizure of the goods of the

person by whom, or of whose goods such bill of sale, shall have been made, and against every person on whose behalf such process shall have been issued, be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale, which at or after the time of such bankruptcy, or of filing the insolvent's petition in such insolvency, or of the execution by the debtor of such assignments for the benefit of his creditors, or of executing such process (as the case may be), and after the expiration of the said period of twenty-one days, shall be in the possession, or apparent possession, of the person making such bill of sale, or of any person against whom the process shall have issued under, or in the execution of which, such bill of sale shall have been made or given, as the case may be."

Section 2 provides, that:—"If such bill of sale shall be made or given, subject to any defeasance or condition, *or declaration of trust*, not contained in the body thereof, such defeasance, or condition, or declaration of trust, shall, for the purposes of this Act, be taken as part of such bill of sale, and shall be written on the same paper or parchment, on which such bill of sale shall be written, before the time when the same, or a copy thereof, respectively, shall be filed, otherwise such bill of sale shall be null and void to all intents and purposes, as against the same persons, and as regards the same property and effects, as if such bill of sale, or a copy thereof, had not been filed according to the provisions of this Act."

The declarations of trust referred to in the second section, are only trusts in favour of the grantor of the bill, and where there are no such trusts, it is not necessary that, the grantee under a bill of sale, should state in it the name of the person who really advances the

money. The object of the provision being, to prevent creditors being defrauded by sham bills of sale, by which the whole interest of the grantor is apparently transferred, whereas, in reality, he retains some interest in the subject of the transfer. (*Robinson* v. *Collingwood*, 34 L.J., C.P. 18.)

We have previously considered what are "bills of sale," (see Chapter I.) and what "personal chattels," (Chapter II.) within the meaning of the Act.

As to possession and apparent possession.—As the personal chattels, in respect of which, an unregistered bill of sale is declared void against assignees in bankruptcy and execution creditors, are such as shall be in the possession or apparent possession of the person making the bill, or other persons in the Act mentioned, it will be convenient here, to consider what is meant by apparent possession. The Act itself declares, (section 7) that "personal chattels shall be deemed to be in the apparent possession of the person making or giving the bill of sale, so long as they shall remain, or be in or upon any house, mill, warehouse, buildings, works, yard, land, or other premises occupied by him, or as they shall be used and enjoyed by him, in any place whatsoever, *notwithstanding that formal possession thereof may have been taken by or given to any other person.*"

The possession of a vendor or mortgagor is a question of fact, rather than of law, and is to be decided by the jury. Bramwell, B., has observed (*Gough* v. *Everard*, 32 L.J., Ex. 210) that, the meaning of this clause is, that the goods shall be deemed to be in the apparent possession of the vendor, as long as they are on the premises occupied by him, if there has been nothing more done to them than mere formal possession taken. The Chief Judge in Bankruptcy, however, in commenting upon this view said (*Re*

Vining, 39 L.J., By. 4): "The plain enactment is in substance that, if the owner of the bill of sale do not comply with the provisions of the statute, his security shall be void against assignees in bankruptcy, with respect to chattels left in the apparent ownership of one who becomes bankrupt. The creditor is at liberty, under his bill of sale, whether registered or not, to take possession of that, which has been assigned to him, and to remove or deal with it as the owner. If, instead of exercising his rights, he thinks fit to leave the goods which have been assigned to him, and which have thereby become his, in the house of the debtor, the bill of sale not having been duly registered, he leaves them in the debtor's apparent ownership, and he cannot be relieved from the consequences, by proving only that, it was not a merely formal possession, that was taken by him."

In *Ex parte Mutton, Re Cole* (L.R. 14, Eq. 178), M. was the holder of an unregistered bill of sale from C., dated the 9th January, 1869. On the 10th March, 1871, the sheriff seized the goods of C., comprised in the bill of sale. On the 14th, M. left a man on the premises of C., jointly with the sheriff's officer. On the following day, C. was adjudicated bankrupt, and M., in ignorance of, and after the adjudication, paid out the sheriff's officer, and entered into possession; on a motion by M., that the trustee be ordered to pay to him the proceeds of the sale of the goods, the Chief Judge in Bankruptcy held, that the bill of sale, being unregistered, was void, as against the trustee: that no such possession was taken by M., as to relieve him from the effects of non-registration. That payment out of the sheriff's officer, after the adjudication, did not better his position, and that the proceeds of the sale of the goods belonged to the trustee, but charged with the repayment to M., of the monies paid by him to the sheriff.

What the "something more than *formal* possession" must be, has never been very clearly defined by the judges. But it would seem from the cases, that, the possession which has been upheld by the courts, has been when the person who has taken possession of the goods, has also got possession of the premises in which they are. Thus, in *Smith* v. *Wall* (18 L.T., N.S. 182), the creditor had put a man in possession of the house containing the goods comprised in the bill of sale, kept the doors locked, and stopped the business carried on there; two days after, printed notices of sale by auction of the goods were posted outside the house, stating that the sale was to take place under a bill of sale. The debtor, who was an infirm old man, remained on the premises, contrary to the officer's wishes, as he said he could not get lodgings elsewhere. These proceedings were held to have taken the goods out of the apparent possession of the debtor.

On the other hand, the following circumstances were held to show that the goods remained in the apparent possession of the grantor, within the meaning of the Act, and that only formal possession had been taken. H., on the 3rd November, 1870, executed a bill of sale, which was never registered, assigning the furniture in his house to L. On the 28th of November L. sent a broker's man to take possession of the furniture. This man continued to live in the house of H., and to sleep there until H. became bankrupt, but H. was permitted to use and enjoy the furniture just as before possession was taken. On the 19th December, bills were posted in the neighbourhood, announcing a sale of the furniture by auction, on the 28th, but not stating that the sale was to take place under a bill of sale. On the 23rd of December H. was adjudicated a

bankrupt, and it was held that the bill of sale was invalid, and that the furniture passed to the trustee, under the bankruptcy. (*Ex parte Lewis, Re Henderson*, 19 W.R. 835.) Mellish, L.J., in delivering judgment, remarked: "The facts of *Smith* v. *Wall*, compared with those of the present case, appear to show exactly what is necessary to make the possession taken by the person claiming under a bill of sale good, as against the trustee in bankruptcy of the maker of the bill of sale. In *Smith* v. *Wall* the man who took possession did not leave the goods in the possession of the mortgagor just as before, and merely live in the house and sleep in a room upstairs. On the contrary, he tried to turn the mortgagor out of the house, but, he allowed him, as he was an old man, and as he said he could not get a lodging elsewhere, to sleep in the house. In that case, the bills announcing the intended sale of the goods, stated that, the sale was to be made under a bill of sale. In the present case, there was nothing in the bills to show that the sale was not one which was to be made by H. himself of his furniture. It appears to me, that, the possession which was taken, was merely that which the Act means by "formal possession," and that, bills announcing a sale of the goods by auction, even if posted upon the house in which the goods were, would not be enough to terminate the possession of the bankrupt, unless they stated that the sale was to be made under a bill of sale.

The Court of Exchequer, interpreting the words in the above section, "so long as they shall remain, or be in, or upon any house, land, or other premises, *occupied* by him," have recently held (*Robinson* v. *Briggs*, 40 L.J., Ex. 17), that, the occupation must be a *de facto* occupation, and, therefore, where goods comprised in an unregistered bill of sale, had

been deposited in rooms rented by the grantor, and the keys of the premises had been demanded and given up to the grantee in consequence of non-compliance by the grantor with the conditions of the bill of sale, and the grantee entered, marked the goods, and kept the keys, the jury found rightly, that, the premises were not "occupied" by the grantor, and the goods were, therefore, not in his "apparent possession" within the meaning of the Act.

When registration is necessary.—To create the necessity for registration under the Act, there must be apparent possession by the maker of the bill of sale for upwards of 21 days after it is made. So, that, if within the 21 days the assignee takes and retains possession he acquires a good title, notwithstanding the maker may have become bankrupt, or an execution creditor may have seized them during the interval. In fact, an unregistered bill of sale is a good assurance against all the world for the space of 21 days. (*Marples* v. *Hartley*, 30 L.J., Q.B. 92; *Brignall* v. *Cohen*, 21 W.R. 25.) And, where the goods are taken in execution within the 21 days, a bill of sale is not void, although the holder, intending to comply with the Act, has filed documents not in conformity with it, for an imperfect registration will not place the holder of the bill of sale in a worse position, than if there were none whatever. (*Banbury* v. *White*, 32 L.J., Ex. 258.) Even, if the grantee of the goods contained in the bill of sale, obtains possession of them at any time before they are seized in execution by a creditor, although the 21 days may have elapsed, the bill of sale, though unregistered, confers a good title upon the grantee.

Where an attempt was made to evade the necessity of registration by having a new bill of sale every nineteen days, it was decided that the new bills were void on

the bankruptcy of the assignor. (*Ex parte Cohen, Re Sparke*, 41 L.J., By. 17.) But the ground of this decision was, that the transaction was in pursuance of a prior agreement for successive deeds being executed, and that there was no new consideration for the subsequent bills of sale. If there had been a new consideration and a new arrangement it would be otherwise. Thus, in *Ex parte Harris, Re Pulling*, (42 L.J., By. 9) a trader gave a bill of sale of the furniture in his dwelling house to secure acceptances which the creditor had discounted for him, and which were to become due within the 21 days. The debtor requested the creditor not to register the bill of sale, until the acceptances became due and were dishonoured. It was accordingly not registered, nor was possession taken of the goods. On the day (12th October) the acceptances fell due, they were dishonoured, and the creditor had to take them up. The debtor gave him new acceptances to fall due within 18 days (on the 30th October) from that date, and he also gave him a new bill of sale of the furniture. These acceptances on falling due, were dishonoured, and the creditor instructed a broker to take possession of the furniture. The broker, on the 31st October, endeavoured to take possession, but his men found the door locked, and they were unable to obtain possession until the next day, when he seized the furniture and removed it. On the 31st October, the second bill of sale was registered, and the same day the debtor filed a petition for liquidation by arrangement. The second bill of sale was held to be valid; James, L.J., remarking that: "He could see no evidence that it was a device to evade the operation of the Bills of Sale Act. The debtor said to his creditor, 'Do not register the bill of sale till after the expiration of 21 days.' The Act allowed this to be done. The second bill of sale

was given upon an entirely new arrangement. The creditor lent the money to take up the bills of exchange which were unpaid, and then he took a security for the new bills of exchange, which were substituted for the unpaid ones."

The courts will go to greater lengths in supporting a transaction of this evasive nature against execution creditors than against trustees in bankruptcy. Thus, in a case in which there had been successive renewals of a bill of sale, which was in the form of a mortgage and contained a proviso for redemption, the last of the series was held good against an execution creditor who levied four days after the date of such last bill of sale, which was afterwards registered within the 21 days, on the ground that, although the property had passed from the grantor by the former bills of sale, yet, as there was a power of redemption, each making of a new bill of sale would be regarded as a redemption of the goods and a fresh mortgage of them (*Hollingsworth* v. *White*, 10 W.R. 619); and, even where, in the case of a bill of sale which, though in fact a mortgage, purported to amount to an absolute sale of the property, there had been similar successive bills, the preceding one in each case being destroyed upon the execution of a new one, but no fresh consideration having been paid; the last of the series was, upon being duly registered, held to be valid against execution creditors, on the original consideration, on the ground that, the intention of the parties must have been that the original consideration should be treated as existing as a debt, although the giving of each new bill of sale amounted to an annulment of the preceding one, and as a revesting of the goods in the debtor who, by the new bill of sale, immediately transfers them to the grantee, and so on to the last bill of sale given, when, if the debtor is in possession

and the bill of sale is registered, all that the law strictly requires to be done is complied with. (*Small* v. *Burr*, 21 W.R. 193.)

Devices of this sort are frequently resorted to, as the maker of a bill of sale is often anxious to avoid its being known that he has executed such an instrument. There is always a margin of insecurity about such a proceeding, but it is probable that, in the majority of cases, it might be so carried out as to be upheld, provided no actual agreement was entered into by the parties at the commencement, for a succession of deeds, if, in fact, the transaction would come within the terms of the judgment of James, L.J., in the previously cited case of *Ex parte Harris*.

And, inasmuch as an *agreement* to give a bill of sale does not require registration, it seems the following plan might be adopted to avoid that step, namely, to have an agreement under seal, for giving when required, a bill of sale in the form given in a schedule to the agreement, with power for the creditor to execute it in the name of the debtor, on his default in doing so. If the bill were executed either by the debtor, or in his name by the creditor, before the debtor committed an act of bankruptcy, or before his goods were actually seized, it would be perfected by registration within the 21 days so as to protect the creditor. (See 16 S.J. 302.)

With regard to the 21 days it would seem, by analogy to a warrant of attorney, that the time is to be reckoned, exclusively of the day of execution, so that a bill of sale, having been executed on the 9th would be properly filed on or before the 30th of the same month. (Robinson on Warrants of Attorney 75.)

The effect of non-registration.—The statute we are now considering, only avoids unregistered bills of sale as against assignees [trustees], under the bankruptcy or

an assignment for the benefit of the creditors of the maker of the bill, and his execution creditors. So that, an unregistered bill of sale is, at any period of time after it is made, not only good as between the grantor and the grantee, but against all the world other than the persons before mentioned, and will even prevail against a subsequently given and registered bill of sale. Therefore, if the owner of goods executes a bill of sale of them in favour of A., which is not registered, and subsequently assigns the same goods by a second bill of sale to B., which is registered, B. will have no title under the second bill of sale, as the grantor had previously parted with his property in the goods to A., and had nothing in them to convey to B. (*Nicholson* v. *Cooper*, 27 L.J., Ex. 393.) But, where a debtor made a bill of sale of his goods to S. which was not registered, and afterwards made another to H., which was registered, and, execution being issued against him, both S. and H. claimed the goods, which still remained in the debtor's possession, it was held that, H. was entitled to them, on the ground that the consequence of avoiding an unregistered bill of sale by execution is to displace it altogether, and not merely as concerns the execution creditor. (*Richards* v. *James*, 36 L.J., Q.B. 116.)

The holder of a prior bill of sale does not lose his priority, by reason of the holder of a subsequent bill of sale of the same chattels proceeding to take possession of them, for there is no rule of law requiring the former to perfect his title as against the latter, by taking possession. (*Ex parte Allen, Re Middleton*, 40 L.J., By. 17.)

From the above remarks, it will be seen that a person, who is about to advance money upon the security of a bill of sale, should make diligent inquiries to ascertain that no previous unregistered bill

of sale has been given, otherwise he may find himself to be the holder of a perfectly worthless instrument. The plan is sometimes adopted of requiring a statutory declaration from the giver of the bill of sale, that the goods are not subject to any prior security or charge.

Effect of registration.—We have seen that an unregistered bill of sale, if made without fraud, is good against all persons other than execution creditors and trustees in bankruptcy. Moreover, there is no question that a duly registered bill of sale is good against execution creditors. But it is not free from doubt how far a registered bill of sale of chattels, of which the grantor retains possession, is valid against his trustees in bankruptcy, if he be a trader, and his possession be such as to render him reputed owner of the goods. In a previous Chapter (Chapter IV.), we considered under what circumstances "goods and chattels at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, being a trader, by the permission of the true owner, of which goods and chattels the bankrupt is reputed owner," pass to his trustee in bankruptcy. It has been decided, on several occasions, that there is nothing in the Bills of Sale Act to narrow the doctrine of reputed ownership, and that the registration of the security will not take the chattels included in it, out of the order and disposition of the bankrupt. (*Badger* v. *Shaw*, 29 L.J., Q.B. 73.) And though a contrary view has been taken by Malins, V.C., in *Ashton* v. *Blackshaw* (L.R., 9 Eq. 517), and assented to by the Chief Judge in Bankruptcy, in *Ex parte Homan*, (L.R., 12 Eq. 598), it was upon grounds which were duly considered by the Court of Queen's Bench in *Badger* v. *Shaw*, and satisfactorily disposed of, and until some Appellate Court shall decide the contrary,

it must be taken to be law that property, which, apart from the operation of the Bills of Sale Act, would pass to the trustee in bankruptcy under the order and disposition clause, will still so pass, though included in a duly registered bill of sale.

To defeat the trustee in bankruptcy, in case the grantor of the bill of sale should become bankrupt, the precaution should be adopted of framing the bill of sale, so that the grantee can take possession of the goods upon very short notice, whenever he fears bankruptcy is impending over the grantor. But this matter will be dealt with at more length in the next Chapter.

The requisites of the affidavit to be filed.—The affidavit to accompany the bill of sale at the time it is filed or registered must set forth: (1) The time of the making of the bill of sale, (2) a description of the residence and occupation of the grantor, and (3) a like account of the attesting witness. It is immaterial whether the bill of sale itself contain any or all of these particulars, or, indeed, whether they are correctly stated therein, but they *must* be contained in the affidavit. And, even though the bill of sale contain these matters, the affidavit must contain them also, either in express words or by direct reference to them, as set forth in the bill of sale, so as to verify them on oath. It is therefore proposed to consider the result of the decisions upon each of these three points:—

1. The time of making the bill of sale.—In order to comply with the requirements of the Act, the affidavit must accurately state the day of execution, and an affidavit alleging that the deponent was present and saw the bill of sale annexed, bearing date the 20th day of June, 1860, duly executed, would be bad for not averring when it was in fact executed.

And if the affidavit state the day of the actual execution of the bill of sale, it is valid, though the consideration money was not paid, nor the deed attested, until two days after the actual execution. (*Darvill* v. *Terry*, 6 H. & N. 807.)

2. Description of the residence and occupation of the grantor.—The whole object of the Act is to prevent frauds, and to give, by means of registration, information to all persons whom it may concern, that a debtor, or a person about to contract debts, has executed a bill of sale, and thereby deprived himself of a portion of his property. And the reason for the affidavit of the residence and occupation of the grantor is to ensure that there shall be such a description on oath, so that where these matters are not distinctly sworn to the statute is not complied with. (*Jones* v. *Harris*, 41 L.J., Q.B. 6.) The affidavit should contain such information as will unmistakeably identify the grantor and also give the assignee and creditor a true idea of his position in life, and therefore a misdescription, or the absence of a true description, in regard to his occupation, is substantial and invalidates the transaction. (*Allen* v. *Thompson*, 25 L.J., Ex. 249.)

In a very recent case, the grantor of a bill of sale described his occupation as that of an "accountant." He was, in fact, a clerk in the accountant's department at the Euston Square Station of the London and North Western Railway. He resided at Acton; and occasionally made up tradesmen's books in his leisure hours. It was held by the Court of Exchequer that the description was insufficient, the real occupation of the grantor being that of a clerk in a department of the L. & N. W. Ry. Co. (*Larchin* v. *North Western Deposit Bank*, L.R., 8 Ex. 80.)

In describing a man's occupation it must be borne in mind that it means the business he follows, the

profession, pursuit, calling, or avocation by which he makes his living or gains money, and not any mere title or designation to which he is accustomed by the courtesy of the world or the usages of society, or even to which he is entitled by express enactment of law. Thus, the description of a person who was the lessee and manager of a theatre, as an "esquire" was held insufficient. So "gentleman" is no description at all of an occupation, and can only be sufficient where the grantor is entirely without occupation. Therefore, it has been held an insufficient description of a clerk in a public office and of a buyer of silk for a city house (*Adams* v. *Graham*, 33 L.J., Q.B. 71), and of a clerk to a dissolved firm of attorneys by whom he was employed at the time of giving the bill of sale in making out the accounts of the firm. (*Beales* v. *Tennant*, 29 L.J., Q.B. 188.) And the description is even an improper one for an attorney or solicitor, without also mentioning his profession, though his proper legal description is that of a gentleman. (*Tuton* v. *Sanoner*, 27 L.J., Ex. 293.) But a person who has never actually been engaged in any occupation may be described as a "gentleman." (*Gray* v. *Jones*, 14 C.B., N.S. 743.) And it is not necessary to mention an occupation which a person has only casually and temporarily followed, so that where the grantor was a medical student, who had for some time acted as a surgeon's assistant, but there was no evidence that he was so acting at the time of the bill of sale, he was held to be sufficiently described as a gentleman. (*Bath* v. *Sutton*, 27 L.J., Ex. 388.) And the same was held a good description of a person who had been a colliery agent, but for some months had been out of employment, and of an undischarged bankrupt following no occupation. (*London, &c., Loan Co.* v. *Chace*, 31 L.J., C.P. 314.) But it is

suggested that in all these cases it will be a safe precaution to describe the grantor as lately carrying on a specified trade, but now of no occupation, thus: "John Jones, of 200, Fleet Street, in the city of London, late a butcher, but now of no occupation."

An affidavit of the residence and occupation of the grantor, to the best of the deponent's belief, is sufficient if uncontradicted. (*Roe* v. *Bradshaw*, 35 L.J., Ex. 71.)

It is a somewhat nice question, how far an imperfect description of the grantor in the affidavit may be explained and cured by reference to the bill of sale. If there be an entire absence of the description of the occupation or residence of the grantor in the affidavit, the bill of sale filed at the same time cannot be looked at to supply what is wanting in the affidavit, though the grantor is there fully described. But, if the affidavit state that the grantor is the person named in the bill of sale, and that he is truly described therein, it will be sufficient. (*Hatton* v. *English*, 26 L.J., Q.B. 161.) And, if there be upon the affidavit a description of the residence and occupation of the grantor, which was intended to be a true description, but there is a slight ambiguity in the expression used, that ambiguity may be removed by reference to the bill of sale containing a true and unambiguous description. Thus, in an affidavit filed with the copy of a bill of sale, it was sworn that the deponent was present, and did see the said J.A. execute the said bill of sale, and that the said J.A. *resides at Dynevor Lodge*, and is an auctioneer; it was also sworn in the affidavit that the paper writing thereto annexed was a true copy of a bill of sale given by J.A., &c. The paper writing, thus referred to and annexed, commenced: "This indenture made the 5th day of December, 1870, between J.A., of Dynevor Lodge, *in the parish of Llanarthney, in the county of Carmarthen,*

auctioneer, of the one part," &c. It was held that, although if the affidavit were taken alone, the description of the residence of the grantor would be insufficient, yet the defect might be cured by reference to the bill of sale. (*Jones* v. *Harris*, 41 L.J., Q.B. 6.)

If the description be substantially correct, so that creditors could not have been misled by it, but any person could easily discover the identity of the party, it is sufficient. Thus, where a person's residence was described in the affidavit as of "New Street, Blackfriars, in the county of Middlesex," instead of "New Street, Blackfriars, in the city of London," it was held good. (*Hewer* v. *Cox*, 30 L.J., Q.B. 73.)

The description of residence and occupation to be contained in the affidavit, must be such as fits the person at the time of giving the bill of sale, not at that of filing it; it is immaterial that he has changed one or both in the interval. (*London, &c., Loan Co.* v. *Chace*, 31 L.J., C.P. 314.) Where the bill of sale is executed by two grantors, one only of whom is in possession of the goods, it is not sufficient that the affidavit give a description of the one so in possession. (*Hooper* v. *Parmenter*, 10 W.R. 648.)

A trading company may give a bill of sale to secure a debt, although the power to do so is not expressly conferred by the articles of association. And, in such a case, no statement of its residence or occupation need be given in the bill of sale or the affidavit, nor is it necessary to state the residences or occupations of the directors who sign as such, and not as attesting witnesses. (*Shears* v. *Jacob*, 35 L.J., C.P. 241.)

3. Description of the residence and occupation of the attesting witness.—The description, in the affidavit, of the witness to the execution of the bill of sale, must be such as to enable a man readily, and without difficulty, to find out who he is, the object

being to furnish the means for any one to apply to him to ascertain, if necessary, the *bona fides* of the transaction. It would seem, in fact, that the same exactness of description of residence and occupation is required in the case of the attesting witness, as in that of the grantor, for the same words in the Act refer to the witness as to the grantor. What is a sufficient description of residence will depend upon the particular circumstances of each case. If a person is resident in a small town, or is a well known person in a town of moderate size, it would be sufficient to describe him, generally, as of that town; on the other hand, if he is resident in a large town or city, it would be necessary to give the street and number of the house in which he lives. Probably, the ordinary postal address of the witness would, in the majority of cases, be sufficient. For example, the description "of the city of Cork," would not be sufficient; unless, possibly, the person were one of the chief merchants there; but "law clerk, Carlow, in the county of Carlow," was held a sufficient description of a person living in a town of 9,000 inhabitants. (*McCue* v. *James*, 19 W.R. 158.) And where the attesting witness stated in the affidavit, "I reside at Hanley, in the county of Stafford, and am an accountant," and it appeared that he was a clerk to H., an accountant, at Manchester, and managed H.'s business at Hanley, being allowed ocasionally to do business on his own account, and that the name of H., not of M. (the witness) was over the office, but that hundreds of letters reached M. by the post, with the address of Hanley only; although the population of the parliamentary borough of Hanley was 40,000, it was held a good description of the residence and occupation of the attesting witness. (*Briggs* v. *Boss*, L.R., 3 Q.B. 268.)

The attesting witness would be properly described as residing at the place where he is employed or carries on business. Thus, a solicitor's clerk is properly described as residing at his master's office, where he attends all day; but he might also be described as residing at the place where he sleeps at night. (*Blackwell* v. *England*, 8 E. & B. 541.)

The observations we have previously made on describing accurately the occupation of the grantor, apply with equal force to the attesting witness. If the witness have no particular occupation, he may be described as having no occupation, or as a gentleman. But, if the witness have any distinct occupation, that occupation must be stated, so that, the description of the clerk to an attorney as a "gentleman," is not sufficient. (*Tuton* v. *Sanoner*, 27 L.J., Ex. 293.)

Where the occupation of a grantor or witness is not stated, the onus of proving that such grantor or witness has an occupation, lies on the party seeking to impeach the bill of sale on that ground. (*Bath* v. *Sutton*, 27 L.J., Ex. 388.)

Where the bill of sale contains the residence and occupation of the attesting witness, the affidavit, if made by the attesting witness, will be sufficient, if it contain his name, without adding his residence and description, provided there is a clear reference to those matters in the bill of sale. If the deponent says, "I am the attesting witness to the said bill of sale, and my residence and occupation therein set forth is the true description of my residence and occupation," that is sufficient. (Per Pollock, C.B., in *Banbury* v. *White*, 32 L.J., Ex. 258.) But, if the bill of sale contain a true description of the attesting witness, while the affidavit made by him contains an incorrect description of himself, though referring to himself as the same person as the attesting witness, the descrip-

tion is bad. Thus, a bill of sale was attested by J. S., described properly as "clerk to W. F., a solicitor, of 21, Bedford Row, W.C.;" but the affidavit purported to be made by "J. S., of 21, Bedford Row, Holborn, gentleman," and concluded thus: "I further say that the name or signature J. S., subscribed to the said indenture, and bill of sale, as attesting witness to the execution thereof, is in my own handwriting, and I am a gentleman." The affidavit was held to be insufficient. (*Brodrick* v. *Scale*, L.R. 6 C.P. 98.)

The affidavit should state clearly who was the attesting witness, but in *Routh* v. *Roublot* (28 L.J., Q.B. 240), it was held that the affidavit will be valid if, on comparison with the bill of sale, it appear to have been made by the attesting witness to the bill, although the affidavit does not expressly state that the deponent was the attesting witness.

If there are two attesting witnesses to the bill of sale, there must be a proper description of both, for if there be no description of one of them, the bill of sale will be void. (*Nicholson* v. *Cooper*, 27 L.J., Ex. 393.)

Clerical errors in the affidavit or the bill of sale.—Any important error in the copy of the bill of sale, or the affidavit, which would tend to deceive the world, will invalidate the instrument. But a mere clerical error, not of any importance to the notoriety of the transaction, will not affect it. So, that where in the copy of a bill of sale, which was filed, the name of the grantee was inaccurately spelt, it was held of no importance, though the court expressed an opinion, that if the error had been made in the name of the grantor, the case would have been different. (*Gardnor* v. *Shaw*, 19 W.R. 753.) And where an original bill of sale, and the copy filed, stated, in the recital, the consideration as £100, but, by mis-

take, in the operative part as £1,000, and in all other parts the sum was correctly described, it was held that the error in the operative part was clerical, and could be amended. (*Elliott* v. *Freeman*, 7 L.T., N.S. 715.) In the jurat of an affidavit of the execution of a bill of sale, the date was written 1860, instead of 1861, and it was held that this might be amended. (*Hollingsworth* v. *White*, 10 W.R. 619.) But, where the affidavit omitted to state the description and occupation of the grantor, and of each of the attesting witnesses, an application to have the bill of sale and the affidavit taken off the file, for the purpose of having this omission rectified, was refused; the proper course being to file a new bill of sale and affidavit, with an endorsement thereon referring to the first bill of sale, and a statement to the effect that each of the bills of sale was made for the same purpose, and relates to the same transaction, but that, by reason of an irregularity in the affidavit of execution of the first bill of sale, it had become necessary to file the second bill of sale and affidavit. (*Re O'Brien*, 10 Ir. C.L. Rep. App. 33.)

Practical instructions for filing bill of sale and affidavit.—Before the expiration of twenty-one days after making the security, procure an affidavit of the execution of the bill of sale, to be made by the attesting witness, or either of such witnesses, if there be more than one. The affidavit will be made in the form No. VI. in the Appendix of Precedents, given at the end of this work. Let it be sworn before a judge, or a commissioner for taking affidavits; take it with a true copy of the bill of sale (the original can be taken, if desired, but this is not generally advisable) to the Master's office in the Queen's Bench, Temple; pay the fee, and the officer will file the instruments. Of course, if there is a schedule to the bill of sale, that, or a true copy, must be filed at the same time.

Proof of filing of bills of sale and affidavits thereof.—The Act itself requires the bill of sale and affidavit to be filed at the same time, and the officer of the court would not be justified in filing one without filing the other; and, therefore, that which certifies the time at which the one was filed, certifies also the time at which the other was filed. The book containing a list of bills of sale, required to be kept under section 3 of the Act, is of such a public nature, that a certified copy is admissible in evidence to prove the time at which the affidavit was filed, as well as the time at which the bill of sale was filed. (*Grindell* v. *Brendon*, 28 L.J., C.P. 333.)

Renewing registration.—By 29 & 30 Vict., c. 96, s. 4, the registration of a bill of sale must be renewed every five years, or it will cease to be of any effect. By section 5, the renewal is to be effected by some person filing in the office of the Masters of the Court of Queen's Bench, an affidavit, stating the date of the bill of sale, and the names, residences, and occupations, of the parties thereto, as stated therein, and also the date of the registration of the bill of sale, and that it is still a subsisting security. And the Masters shall thereupon number such affidavit, and renumber the original bill of sale or copy filed in the said office with a similar number. By section 6, such affidavit of renewal shall bear a five shilling stamp, and may be in the form given in the schedule to the Act. The duties of a Master of the Queen's Bench as to the affidavit filed on the renewal of a bill of sale are ministerial, and it is not his duty to inquire whether the affidavit satisfies the requirements of the Act. (*Needham* v. *Johnson*, 15 W.R. 346.)

Book of particulars to be kept by Masters of Queen's Bench.—The third section of the Act provides for numbering bills of sale and keeping certain books of

particulars thereof. By section 7 of 29 & 30 Vict., c. 96, however, it is provided, that instead of the books directed to be kept by the 3rd section of the principal Act, there shall be kept at the office of the Masters of the Queen's Bench one book only, in which shall be fairly inserted, as and when such bills of sale or copies or affidavits of renewal are respectively filed, the name, residence, and occupation of the person by whom the bill of sale was made or given, or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and, also, the name of the person or persons to whom, or in whose favour, the said bill of sale was given, together with the number affixed to the said bill of sale or copy; the whole of the said particulars shall be entered according to the form given in a schedule to the Act, and the said book, and the bill of sale, and affidavit, may be searched and viewed upon payment of one shilling. An office copy or extract from the bill of sale may be had, on payment of 6d. for every 72 words. The officer is entitled to receive for his trouble in filing and entering every bill of sale, or a copy thereof, the fee of one shilling. (17 & 18 Vict., c. 36, s. 4.)

Entering satisfaction of a bill of sale.—A Judge of the Court of Queen's Bench may order a memorandum of satisfaction to be written upon any bill of sale or copy thereof respectively as aforesaid, if it shall appear to him that the debt (if any), for which such bill of sale is given as security, shall have been satisfied or discharged. (17 & 18 Vict., c. 36, s. 6.)

For the purpose of entering up satisfaction the debtor should obtain a certificate from the creditor acknowledging the satisfaction of the claim; and an affidavit must be made before a Judge of the Court of

Queen's Bench, verifying the certificate, and the fact that the debt for which the bill of sale was given as a security has been paid or discharged. On the production of these documents, the Judge will make the order accordingly. The Judge's clerk will draw up the order, and, on taking it to the Masters' office at the Queen's Bench, the officer will endorse the satisfaction on the bill of sale or copy filed.

CHAPTER VII.

On the preparation of bills of sale.

It is hoped that the foregoing Chapters, coupled with the Precedents hereafter given, will enable the reader to understand the nature of a bill of sale, and the rights and also the risks of the holder of such a security, from other persons having or acquiring claims upon goods comprised in it, and further, to comprehend the precautions to be observed in framing and acting upon the clauses of such an instrument. It does not, therefore, seem necessary in conclusion, to do more than briefly draw attention to two of the most vital considerations to the validity of a bill of sale. We have seen that a duly registered bill of sale, where possession is retained by the grantor is good against his execution creditors if such possession be consistent with the terms of the deed, or the nature of the transaction; but that, where the bill of sale is given by a trader, and the goods are of such a nature, that being left in his possession, the law would regard him as reputed owner thereof (see *ante* Chapter IV.), there are no means by which the goods can be prevented from passing to the trustee in bankruptcy of the grantor, in case he should become bankrupt while they are allowed to remain in his possession. Devices more or less successful, have as we have before (Chapter VI.) noticed, been resorted to, to avoid registration, and also to secure the goods against the trustee in bankruptcy; such as a succession of bills of

sale, an agreement for a future bill of sale, &c.; but these devices are always dangerous, would always be more or less tainted with fraud, and are not, therefore, to be recommended. We consider it safer, therefore, to adopt the broad rules of numberless decisions, and point out to those entrusted with the framing of bills of sale by way of mortgage:—1st. That to have the security good against execution creditors, the possession of the grantor must be made consistent with the terms of the deed; and 2nd, that if the grantor be a trader, in order to make it good in the event of his becoming bankrupt, the grantee should be empowered to take possession and sell on default in payment of the money secured, either on demand, or after a very short notice, say for instance, twenty-four hours. For, if this be omitted, he will be precluded by the terms of the deed from taking the goods out of the possession of the grantor, notwithstanding he may know that bankruptcy is impending; until it is too late to prevent the title of the trustee attaching.

The Precedents of conditional bills of sale hereafter given, have been framed to meet as well as possible these two difficulties.

Description of the chattels.—A precise enumeration of the articles included in the bill of sale is not necessary, but the goods should be so designated as to be capable of being identified; and if the question be raised whether particular articles formed part of the goods so described, the fact must be ascertained by extrinsic evidence. (*Jarman* v. *Woolloton*, 3 T.R. 618.) The difficulty of indicating with definiteness, by any general terms, the property intended to be included in a bill of sale, so as to prevent disputes in case of the grantee exercising his power of seizure, has made it customary to resort to the expedient of attaching a schedule or inventory to the deed in

which the articles are specifically set forth. When a schedule is used, great care should be observed in enumerating the articles, otherwise there may be a danger of only such articles as are mentioned in the schedule passing, however general and inclusive the description in the body of the deed may be. Thus, in *Wood* v. *Rowcliffe* (20 L.J., Ex. 285), a bill of sale purported to assign to G. "all the household goods and furniture of every kind and description whatsoever in the house No. 2, Meadow Place, more particularly mentioned and set forth in an inventory or schedule of even date and given up to the said G. on the execution thereof." The inventory did not specify all the goods and furniture, and it was held, that, the bill of sale only operated as an assignment of such as were specified in the schedule.

But this danger, it seems to the author, may be avoided, by adding words to the effect that the schedule is to be considered a further description and not a limitation. For instance, the goods may be described, as all the goods and furniture in a specified house, "which goods and furniture are intended to be more particularly enumerated in the schedule hereunder written, but which said schedule is added by way of further description and identification, and is not intended to limit or circumscribe the general description hereinbefore contained," or words similar in effect. Terms, not so strong or decided as these, have been held to make the schedule a further description, and not a limitation. (See *Baker* v. *Richardson*, 6 W.R. 663.)

When an article is described in a schedule, other articles attached to it, and, though not forming part of the article described, yet in actual use with it, or essential for the proper employment of it, will pass without special mention. So that, by an assignment

of looms on certain premises, and "other effects and things thereto belonging, more particularly set forth in the schedule," articles used therewith, they having been upon the premises, were held to pass, although the looms only were mentioned in the schedule. (*Cort* v. *Sagar*, 27 L.J., Ex. 378; and see Fisher on Mortgages 29.)

When a schedule is used, it must be filed at the same time as the bill of sale. And it should be written on the same paper or parchment as the deed, or firmly annexed to it, otherwise a question may arise whether it may not become chargeable with a separate stamp duty. (See 33 & 34 Vict., c. 97, tit. "Schedule," and *Dyer* v. *Greene*, 1 Ex. 71.)

It may be convenient here to note the case of *Green* v. *Attenborough* (34 L.J., Ex. 88), which decided that, inasmuch as the goods pass upon the execution of the bill of sale, the subsequent alteration or destruction of the original deed, will not matter, and provided a true copy is filed, it will be valid and effectual under the Bills of Sale Act. The circumstances were that, at the time of the execution of the bill of sale a rough inventory of the goods which had been previously made on several loose sheets and appended to the bill, remained fixed thereto. A few days afterwards a fair copy of the inventory was made and signed, and with the consent of both parties to the bill of sale, the rough inventory was disannexed and the fair copy affixed instead. Both the rough copy and the fair copy agreed. A copy of the bill of sale and of the inventory was duly filed, and it was held effectual. But it is suggested that the decision would have been otherwise if the original bill of sale, with the fair copy of the inventory, had been filed, for, as the disannexing of the inventory was a mutilation and alteration of the deed, the matter filed would

neither be the original bill of sale or a true copy thereof within the terms of the Act.

Stating the consideration.—Care must be taken in preparing the deed to state truly the consideration paid by the purchaser or mortgagee, and upon which the *ad valorem* duty will have to be paid, as the omission to do so will expose the parties, who prepare the deed, to penalties, though any mis-statement of the consideration neither avoids the deed, nor affects its admissibility in evidence.

Stamps.—A bill of sale should be stamped according to the amount of the consideration appearing on the face of the deed. The want of a proper stamp does not, however, affect the validity of the deed, but merely renders it inadmissible in evidence, except in criminal proceedings, or for some collateral purpose, as for example, to prove fraud or an act of bankruptcy, consisting in the execution of the deed itself. And even in a Court of Civil Judicature the instrument may, upon the payment of certain penalties, be admitted in evidence. (33 & 34 Vict., c. 97, s. 16.)

It is provided by the Stamp Act 1870 (33 & 34 Vict., c. 97, s. 57), that "a copy of a bill of sale is not to be filed in any Court, unless the original, duly stamped, is produced to the proper officer." A similar provision was contained in the previous Stamp Act, and upon the construction thereof it was held, that the section was a direction to the officer, casting on him the duty of seeing that the bill of sale is duly stamped, and that the mere absence of a proper stamp did not invalidate the registration, otherwise regular, but that the deed might be received in evidence and due effect given to it, when, on payment of the penalty it had been properly stamped. (*Bellamy* v. *Saull*, 32 L.J., Q.B. 367.) But, as the officer will refuse to register an improperly stamped

deed, attention to the stamp will prevent delay and disappointment.

An absolute bill of sale is chargeable as a conveyance with an *ad valorem* stamp, on the consideration money; and a conditional bill of sale to secure money is subject to the same stamp duty as a mortgage. Therefore, in the case of an absolute bill of sale, the following stamps must be used :—

Where the amount or value of the consideration for the sale does not	£	s.	d.
exceed £5	0	0	6
Exceeds £5 and does not exceed £10	0	1	0
„ 10 „ „ 15	0	1	6
„ 15 „ „ 20	0	2	0
„ 20 „ „ 25	0	2	6
„ 25 „ „ 50	0	5	0
„ 50 „ „ 75	0	7	6
„ 75 „ „ 100	0	10	0
„ 100 „ „ 125	0	12	6
„ 125 „ „ 150	0	15	0
„ 150 „ „ 175	0	17	6
„ 175 „ „ 200	1	0	0
„ 200 „ „ 225	1	2	6
„ 225 „ „ 250	1	5	0
„ 250 „ „ 275	1	7	6
„ 275 „ „ 300	1	10	0
„ 300			
For every £50 and also for every fractional part of £50 of such amount or value	0	5	0

If the bill of sale be conditional, or by way of mortgage, the following duties become payable :—

Where the instrument is the only or principal or primary security for

The payment or repayment of money	£.	s.	d.
Not exceeding £25	0	0	8

	£.	s.	d.
Exceeding £25 and not exceeding £50	0	1	3
„ 50 „ „ 100	0	2	6
„ 100 „ „ 150	0	3	9
„ 150 „ „ 200	0	5	0
„ 200 „ „ 250	0	6	3
„ 250 „ „ 300	0	7	6
„ 300			
For every £100, and also for any fractional part of £100 of such amount	0	2	6

If it be a collateral, or auxiliary, or additional, or substituted security, or by way of further assurance for the above mentioned purpose, where the principal or primary security is duly stamped:—

For every £100, and also for any fractional part of £100 of the amount secured...	0	0	6

The following section in the Stamp Act should be borne in mind, where a bill of sale is a security, not only for the money actually advanced at the time, but for further advances: "A security for the payment or repayment of money to be lent, advanced or paid, or which may become due upon an account current, either with or without money previously due, is to be charged, where the total amount secured, or to be ultimately recoverable, is in any way limited, with the same duty, as a security for the amount so limited." And, further, "where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover." (33 & 34 Vict., c. 97, s. 107.)

An unstamped, or insufficiently stamped instrument, may be stamped after the execution thereof, on payment of the unpaid duty, and a penalty of £10, and also, by way of further penalty, where the unpaid duty exceeds £10, of interest on such duty, at the rate of £5 per cent per annum, from the day upon

which the instrument was first executed, up to the time when such interest is equal in amount to the unpaid duty. But the commissioners may, if they think fit, at any time within twelve months after the first execution of any instrument, remit the penalty or penalties, or any part thereof. (Section 15.)

Stamp duties upon bills of sale should be indicated by impressed, and not by adhesive stamps.

17 & 18 VICT., c. 36.

An Act for preventing Frauds upon Creditors by secret Bills of Sale of personal Chattels. [10th July, 1854.]

WHEREAS frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors: For remedy whereof, be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. Every bill of sale of personal chattels made, after the passing of this Act, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of such bill of sale, or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, or, in case the same shall be made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness to such bill of sale, be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench, within twenty-one days after the making or giving of such bill of sale (in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed), otherwise such bill of sale shall, as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all sheriffs officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any court of law or equity authorizing the seizure of the goods of the person by whom or of whose goods such bill of sale shall have been made, and against every person on whose behalf such process shall have been issued, be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale, which at or after the time of such bankruptcy, or of filing the insolvent's petition in such insolvency, or of the execution by the debtor of such assignment for the benefit of his creditors, or of executing such process (as the case may be), and after the expiration of the said period of twenty-one days,

shall be in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given, as the case may be.

II. If such bill of sale shall be made or given, subject to any defeasance or condition or declaration of trust not contained in the body thereof, such defeasance or condition or declaration of trust shall, for the purposes of this Act, be taken as part of such bill of sale, and shall be written on the same paper or parchment on which such bill of sale shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such bill of sale shall be null and void to all intents and purposes, as against the same persons and as regards the same property and effects, as if such bill of sale or a copy thereof had not been filed according to the provisions of this Act.

III. The said officer of the said Court of Queen's Bench shall cause every bill of sale, and every such schedule and inventory as aforesaid, and every such copy filed in his said office under the provisions of this Act, to be numbered, and shall keep a book or books in his said office, in which he shall cause to be fairly entered an alphabetical list of every such bill of sale, containing therein the name, addition, and description of the person making or giving the same, or in case the same shall be made or given by any person under or in the execution of process as aforesaid, then the name, addition, and description of the person against whom such process shall have issued, and also of the person to whom or in whose favour the same shall have been given, together with the number, and the dates of the execution and filing of the same, and the sum for which the same has been given, and the time or times (if any) when the same is thereby made payable, according to the form contained in the schedule to this Act, which said book or books, and every bill of sale or copy thereof filed in the said office, may be searched and viewed by all persons at all reasonable times, paying to the officer for every search against one person the sum of sixpence and no more; and that, in addition to the last mentioned book the said officer of the said Court of Queen's Bench shall keep another book or index, in which he shall cause to be fairly inserted, as and when such bills of sale are filed in manner aforesaid, the name, addition, and description of the person making or giving the same, or of the person against whom such process shall have issued, as the case may be, and also of the persons to whom or in whose favour the case shall have been given, but containing no further particulars thereof; which last mentioned book or index all persons shall be permitted to search for themselves, paying to the officer for such last mentioned search the sum of one shilling.

IV. The said officer shall be entitled to receive, for his trouble in filing and entering every such bill of sale or a copy thereof as aforesaid, the sum of one shilling and no more; and such officer shall render a like account to the Commissioners of Her Majesty's Treasury, and the said Commissioners shall have the like powers in every particular with respect to such account, and the amount of remuneration of such officer, and with respect to any surplus of

the fees received by him, as it is provided by the seventy-fifth chapter of the statute passed in the thirteenth and fourteenth years of the reign of Her present Majesty with respect to the officers of the Court of Common Pleas therein mentioned.

V. Any person shall be entitled to have an office copy or an extract of every bill of sale, or of the copy thereof filed as aforesaid, upon paying for the same at the like rate as for office copies of judgments in the said Court of Queen's Bench.

VI. It shall be lawful for any Judge of the said Court of Queen's Bench to order a memorandum of satisfaction to be written upon any bill of sale or copy thereof respectively as aforesaid, if it shall appear to him that the debt (if any) for which such bill of sale is given as security shall have been satisfied or discharged.

VII. In construing this Act the following words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such constructions; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities or licenses to take possession of personal chattels as security for any debt, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same; marriage settlements; transfers or assignments of any ship or vessel or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; bills of sale of goods in foreign parts or at sea; bills of lading; *India* warrants; warehouse keepers certificates; warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, fixtures, and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate, nor shares or interests in the stocks, funds, or securities of any government, or in the capital or property of any incorporated or joint stock company, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving the bill of sale, so long as they shall remain or be in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

VIII. This Act shall not extend to *Scotland* or Ireland.

SCHEDULE.

Name, &c. of the Person making or giving the Bill of Sale, or of the Person divested of Property.	Name, &c. of the Person to whom made or given.	Whether Bill of Sale, Assignment, Transfer, or what other Assurance, and whether absolute or conditional, and Number.	Date of Execution,	Date of Filing.	Sum for which made or given.	When and how payable.

29 & 30 VICT., c. 96.

An Act to amend the Bills of Sale Act, 1854.

[10th August, 1866.]

WHEREAS an Act of Parliament was passed in the 18th year of the reign of Her present Majesty, chapter 36, intituled *An Act for preventing frauds upon creditors by secret bills of sale of personal chattels*, and it is expedient that the said Act, hereinafter referred to as the "Principal Act," should be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Principal Act and this Act shall, as far as is consistent with the tenor of such Acts, be construed together.

2. The Principal Act may be cited as "The Bills of Sale Act, 1854," and this Act may be cited as "The Bills of Sale Act, 1866."

3. The filing of a bill of sale, or a copy thereof, with the affidavit required by the Principal Act, is herein-after referred to as the registration of a bill of sale.

4. The registration of a bill of sale under the Principal Act shall, during the subsistence of such security, be renewed in manner herein-after mentioned once in every period of five years, commencing from the day of the registration, and, if not so renewed, such registration shall cease to be of any effect at the expiration of any period of five years during which a renewal has not been made as hereby required, subject to this provision, that where a period of five years from the original registration of any bill of sale under the Principal Act has expired before the first day of *January*, One thousand eight hundred and sixty-seven, such bill of sale shall be as valid to all intents and purposes as it would have been if this Act had not been passed, if such registration be renewed in manner aforesaid before the first day of *January*, One thousand eight hundred and sixty-seven.

5. The registration of a bill of sale shall be renewed by some person filing in the office of the masters of the Court of Queen's Bench (being the officers acting as clerk of the docquets and judgments in the said Court) an affidavit stating the date of such bill of sale, and the names, residences, and occupations of the respective parties thereto as stated therein, and also the date of the registration of such bill of sale, and that such bill of sale is still a subsisting security, and such masters shall thereupon number such affidavit and renumber the original bill of sale or copy filed in the said office with a similar number.

6. Every affidavit renewing the registration of a bill of sale shall bear an adhesive common law stamp of the value of five shillings, and may be in the form given in schedule A. to this Act, and no further fee shall be payable on filing such affidavit.

7. After the passing of this Act, instead of the books directed to be kept by the third section of the Principal Act, there shall be kept at the said office one book only, in which shall be fairly inserted, as and when such bills of sale or copies as required by the Principal Act, or affidavit of renewal as required by this Act, are respectively filed, the name, residence, and occupation of the person by whom the bill of sale was made or given, or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the said bill of sale was given, together with the number affixed to the said bill of sale or copy as directed by the Principal Act or by this Act (as the case may be); and the date of the said bill of sale or copy, and of the registration thereof, and the date of the filing the said affidavit of renewal, and all such particulars, shall be entered according to the form given in Schedule B. to this Act; and the said book, and every bill of sale or copy and affidavit filed as aforesaid, may be searched and viewed by all persons at all reasonable times upon payment for every search against one person of the fee or sum of one shilling and no more, which fee shall be paid by a common law stamp.

8. Any person shall be entitled to have an office copy of such affidavit of renewal as is required to be filed under this Act upon paying for the same at the like rate as for office copies of bills of sale filed under the Principal Act.

9. Any affidavit required by the Principal Act or this Act may be sworn before one of the masters of the Court of Queen's Bench.

10. All enactments for the time being in force relating to common law stamps shall apply to the stamps to be provided for the purposes of this Act.

11. This Act shall not extend to *Scotland* or *Ireland*.

SCHEDULE A.

I *A. B.* of do swear that a bill of sale, bearing date the day of 18 [*insert the date of the bill of sale*], and made between [*insert the names, &c. of the parties to the bill of sale as in the original bill of sale*], and which said bill of sale [*or* "and a copy of which said bill of sale" (*as the case may be*)] was filed in the Court of Queen's Bench on the day of 18 [*insert the date of filing*], and is still a subsisting security.

Sworn, &c.

SCHEDULE B.

Satisfaction entered.	No.	By whom given, or against whom process issued.			To whom given.	Instrument.	Date of Instrument.	Date of Registration.	Date of filing Affidavit of Renewal.
		Name.	Residence.	Occupation.					

PRECEDENTS.

No. I.

Absolute bill of sale of goods.

THIS INDENTURE, made the———day of———187 , BETWEEN John Jones, of 20,———Street, in the city of London, Fishmonger, of the one part, and Thomas Smith, of 16,———Street, in the county of Middlesex, Grocer, of the other part. WHEREAS the said John Jones has contracted and agreed with the said Thomas Smith for the absolute sale to him of the goods, chattels, and effects in and about his dwelling-house, situate and being No. 20,———Street, aforesaid, which are mentioned and specified in the schedule hereunder written, at or for the price or sum of One hundred pounds. NOW THIS INDENTURE WITNESSETH, that in consideration of the said sum of One hundred pounds of lawful money of Great Britain by the said Thomas Smith to the said John Jones well and truly paid, at or before the sealing and delivery of these presents, (the receipt of which said sum the said John Jones doth hereby acknowledge,) HE, the said John Jones, DOTH by these presents bargain, sell, and assign unto the said Thomas Smith, his executors, administrators and assigns, ALL the goods, chattels and effects in or about the said dwelling-house of him the said John Jones, situate and being No. 20,———Street aforesaid, which are mentioned and specified in the schedule hereunder written. AND all the right, title, interest, property, claim and demand of the said John Jones, of, in and to the said goods, chattels and premises, and every part thereof, To HAVE, HOLD, receive, take and enjoy the said goods, chattels and effects, and all and singular other the premises hereby bargained and sold or intended so to be, with their appurtenances, unto the said Thomas Smith, his executors, administrators and assigns, absolutely as his and their own goods, chattels and effects. AND the said John Jones, DOTH hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said Thomas Smith, his executors, administrators and assigns, that it shall be lawful for the said Thomas Smith, his executors, administrators and assigns, at all times hereafter, to have, hold, use, occupy possess and enjoy the said goods, chattels and effects, hereby assigned or intended so to be, without any let, suit, hindrance, disturbance, claim or demand whatsoever, of, from, or by him the said John Jones, or of, from, or by any person or persons whomsoever. And all and singular the said goods, chattels and effects unto the said Thomas Smith, his executors, administrators and assigns, and against all and every other person or persons whomsoever, shall and will warrant and for ever defend.

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered by the said John Jones in the presence of Henry Robinson, of———Moorgate Street, in the city of London, solicitor's clerk.

THE SCHEDULE to which the foregoing Indenture refers.
(List of the goods and effects.)

Memorandum of delivery of possession to be indorsed on the above Indenture.

BE IT REMEMBERED that on the———day of———187 , being the day and year first within written, a delivery was made by the within named John Jones to the within named Thomas Smith, of the goods, chattels and effects, within mentioned or referred to, a chair being delivered to the said Thomas Smith in the name of the whole in the presence of me [*or* us.]
Witness, Henry Robinson, of———Moorgate Street, in the city of London, solicitor's clerk.

No. II.

Bill of sale by way of mortgage of goods and effects specified in a schedule.

THIS INDENTURE made the———day of———187 , BETWEEN Thomas Roe, of———, in the county of———, Land Surveyor (hereinafter called the mortgagor), of the one part and John Doe, of———, in the county of———, Auctioneer, (hereinafter called the mortgagee), of the other part: WHEREAS the said mortgagee has agreed to lend to the said mortgagor the sum of £——, upon having the repayment thereof, with interest after the rate hereinafter mentioned, secured to him in the manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £——on the execution of these presents, to the said mortgagor paid by the said mortgagee, the receipt whereof the said mortgagor doth hereby admit and acknowledge, HE, the said mortgagor, DOTH by these presents bargain, sell, and assign unto the said mortgagee, his executors, administrators and assigns, all and every the goods, utensils, implements and things which are now in, about and belonging to the messuage or dwelling-house situate and being at———, in the county of———, now in the occupation of the said

mortgagor, and which are intended to be hereinafter particularly mentioned, enumerated and described, in the schedule hereunder written; But the said schedule is added by way of further description and not to abridge the other words of description contained in these presents; AND all his right, title, interest, property, claim and demand in and to the said goods, chattels and premises, and every part and parcel thereof; TO HAVE, HOLD, receive, take and enjoy the said goods, chattels and premises hereby assigned or expressed and intended so to be unto the said mortgagee, his executors, administrators and assigns, as his and their own property and effects, PROVIDED NEVERTHELESS, and it is hereby declared and agreed by and between the said parties to these presents, that in case the said mortgagor, his executors or administrators, shall and do well and truly pay, or cause to be paid unto the said mortgagee, his executors, administrators or assigns, the said sum of £——with interest thereon at the rate of £5 per centum per annum, on the ——day of——, 187 , or at such earlier day or time as the said mortgagee, his executors, administrators or assigns, shall appoint for the payment thereof, in and by a notice in writing to be given by the said mortgagor, his executors or administrators, or left at his or their last or usual place of abode at least twenty-four hours before the day or time so to be appointed for payment as aforesaid, and in the meantime pay unto the said mortgagee, his executors, administrators or assigns, interest on the said sum of £——, at the rate aforesaid, by equal half yearly payments on the——day of——, and the——day of—— in every year; then and in such case, these presents and every article, clause, and thing herein contained, shall cease, determine, and be absolutely void, anything hereinbefore contained to the contrary in anywise notwithstanding. AND the said mortgagor DOTH hereby for himself, his heirs, executors, administrators and assigns, covenant with the said mortgagee, his executors, administrators and assigns, to pay unto him or them the aforesaid sum of £——, with interest thereon, at the time and in manner hereinbefore appointed for payment thereof. AND it is hereby declared and agreed by and between the said parties to these presents, that after default shall be made by the said mortgagor, his executors, or administrators, in payment of the said sum of £——and interest, or any part thereof, contrary to the tenor and effect of the before mentioned proviso, then, and in such case, it shall be lawful for the said mortgagee, his executors, administrators or assigns, peaceably and quietly to receive and take into his and their possession and thenceforth to hold and enjoy all and every the goods, chattels and premises hereby assigned or intended so to be. AND also to sell and dispose of the same and every part thereof for such price or prices as can be reasonably had or gotten for the same; and to receive and take and give effectual discharges for the monies to arise by such sale thereof, and thereby and therewith in the first place to retain and to reimburse himself and them-

selves the said mortgagee, his executors, administrators, or assigns, all costs, charges and expenses, which he or they may incur or be put unto, in and about making any such sale or sales, and also in and about the receipt and recovery of the said sum of £——and interest respectively, and, in the next place, to retain and to reimburse himself and themselves the said mortgagee, his executors, administrators or assigns, the said sum of £——and the interest thereon, or so much and such part thereof as shall then remain unpaid and unsatisfied, and from and after full payment and satisfaction of such costs, charges and expenses, sum and sums of money as aforesaid, to render to and account for the surplus (if any) of the money arising from such sale or sales as aforesaid unto the said mortgagor, his executors or administrators. And it is hereby declared and agreed by and between the said parties to these presents, that until default shall happen to be made in payment of the said principal sum of £——, at the day or time hereinbefore appointed for payment thereof contrary to the tenor and effect of the proviso hereinbefore contained, it shall be lawful for the said mortgagor, his executors or administrators, to hold, make use of and possess the said goods, chattels and premises, hereby assigned or intended so to be, without any manner of hindrance or disturbance of or by him the said mortgagee, his executors, administrators or assigns. And the said mortgagee doth hereby for himself, his heirs, executors and administrators, covenant and agree with the said mortgagor, his executors and administrators, that he the said mortgagee, his executors or administrators, shall not nor will until default shall be made in payment of the said sum of £——and interest, or some part thereof, on some or one of the days or times limited for payment thereof in and by the proviso for redemption hereinbefore contained, bring, commence or institute any action, suit or process, against the said mortgagor, his executors or administrators, for recovery of the said debt or any part thereof.

In witness, &c.

Signed, sealed and delivered by the said, &c.

The Schedule to which the foregoing Indenture refers:

(List of the goods and effects.)

No. III.

Bill of sale by way of mortgage of present and after acquired furniture in a dwelling-house, to secure a present loan and further advances.

This Indenture made the———day of———187 , Between A.B., of, &c., (hereinafter called the mortgagor,) of the one part, and C.D., of, &c., (hereinafter called the mortgagee,) of the other

part. WHEREAS the said mortgagor being in present need of the sum of £——hath applied to the said mortgagee to lend him the said sum of £——, and such other sums not exceeding £——which he the said mortgagor may hereafter require, which the said mortgagee hath agreed to do upon having the assignment or other assurance hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £——to the said mortgagor, in hand, now paid by the said mortgagee (the receipt whereof is hereby acknowledged), HE the said mortgagor by these presents DOTH bargain, sell, assign, transfer and set over, unto the said mortgagee, his executors, administrators and assigns, ALL and singular the furniture, goods, fixtures, chattels and other the effects, now being in, about and upon the messuage and premises, known as,——[*describe it*] and also all or any other goods, chattels and effects, which hereafter may come into or upon, or be about the aforesaid house and premises, or any other premises of the said mortgagor, during the time any money may be due, under and by virtue of these presents, together with all benefits, advantages and emoluments to arise therefrom or thereunto, or in anywise appertaining, AND all the estate, right, title, interest, property, claim and demand whatsoever, both at law and in equity, of the said mortgagor, of, in, and to the same, and any or every of them respectively, TO HAVE and to hold the said furniture, goods, fixtures, chattels and effects, and other the premises hereby assigned unto the said mortgagee, his executors, administrators and assigns, absolutely, but subject as hereinafter mentioned; PROVIDED ALWAYS that in case the said mortgagor shall pay to the said mortgagee the said sum of £——, and all other monies intended to be secured by these presents, with interest for the same, after the rate of £——per centum per annum, upon demand made thereof in writing by the said mortgagee, and do and shall in the meantime, until the repayment of the said sum of £——, and all other monies intended to be secured by these presents, pay or cause to be paid to the said mortgagee, his executors, administrators or assigns, interest thereon, after the rate of £——per centum per annum, by equal half-yearly payments, on the——day of——and the——day of——in every year, such interest to be considered as accruing and becoming due from day to day, and payment thereof to be accelerated by any demand of the principal monies intended to be hereby secured; then and in such case these presents and every part thereof shall cease and become void. AND it is hereby also agreed and declared that the said mortgagee, his executors, administrators or assigns, shall be at liberty to add to the sum secured by these presents any further advance or advances he or they may make to the said mortgagor, (not exceeding in the whole the sum of £——) and also any money or monies he or they may from time to time pay or advance for his benefit, or for the better securing of these presents, and the true intent and meaning hereof; and the said mortgagee shall have the same remedies in all respects for the repayment and recovery

thereof as are herein provided, as if such payments and advances had originally constituted an integral part of the said loan. PROVIDED ALSO, and it is hereby declared and agreed that if the said mortgagor, his executors or administrators, shall make default in payment of the said loan, or any part thereof, at the times and in the manner herein provided, or neglect to perform any of the covenants contained in these presents, the whole amount of money secured by these presents shall be then immediately due and payable, and it shall be lawful for, but not obligatory on the said mortgagee, his executors, administrators or assigns, without any further consent or concurrence, and notwithstanding the dissent or non-concurrence of the said mortgagor, his executors, administrators or assigns, to take possession of the said furniture, goods, fixtures, chattels and effects, and thenceforth to hold and enjoy the same to and for his and their own absolute use and benefit, and also to sell and dispose of the same, at such times in such manner and under such conditions as the said mortgagee, his executors, administrators or assigns shall think fit, with liberty for him or them to buy in the same or any part thereof, and to rescind any contract for sale and afterwards to sell such of the same which shall be bought in and comprised in such contract, without being liable for any loss occasioned thereby, and no person dealing with him or them in and about such sale, shall be required to see to the application, or be answerable for the misapplication of the purchase money or any part thereof, or be required to ascertain that any default in the payments secured by, or performance of, the covenants of these presents, has been made, or that any money is due upon the security of these presents. AND it is hereby also agreed and declared that the said mortgagee, his executors, administrators or assigns, shall hold the monies to arise from any sale, in pursuance of the aforesaid power upon trust, in the first place, thereout to pay all charges or incumbrances which shall or may affect or attach to the goods, furniture, chattels and effects, (if he shall think fit so to do,) and also the expenses of, and incident to taking and holding possession of the said goods and of and incident to such sale or sales or otherwise in relation to the premises, (including five pounds per centum commission, travelling expenses, costs of advertising, and all and any other law costs and charges and expenses, notwithstanding the said mortgagee may personally sell the same.) And in the next place to apply such monies in or towards the satisfaction of the monies for the time being owing on the security of these presents. And then to pay the surplus, (if any) unto the said mortgagor, his executors, administrators or declared assigns. PROVIDED ALSO, that in the event of a sale of the said goods not taking place, the said mortgagee, his executors, administrators or assigns, shall not be obliged to accept the said sum of £——and other monies hereby intended to be secured or so much thereof as shall remain due, without being paid also all costs, charges, damages, expenses and payments of any kind, which he or they may have been put to, or incurred in giving effect to the

true intent and meaning of these presents. And that in the event of the said last mentioned costs, charges and damages not being paid to the said mortgagee, his executors, administrators or assigns, or in the event of the said mortgagor permitting himself to be sued, either at law or in equity, for any debt or debts, or if any writ of fieri facias, distress for rent, or other proceedings of any nature, be levied or taken against the said goods hereby assigned, or in the event of the said mortgagor doing any act or deed whereby he shall render himself liable to be made or become a bankrupt or insolvent, or shall be arrested upon, or imprisoned under any process, civil or criminal, or in the event of the said mortgagor not producing to the said mortgagee, his executors, administrators or assigns, when demanded by him or them, the receipt or receipts for the insurance against fire or tempest, of the said goods and effects or the receipt or receipts for the rent and taxes, payable by the said mortgagor in respect of any house or houses or premises where the said goods shall be or be placed, for the quarter immediately preceding the day when the receipt or receipts shall be so demanded, or in the event of the said mortgagor or any other person doing, omitting, neglecting or refusing to get done any act, matter or thing, whereby the said mortgagee, his executors, administrators or assigns, shall consider that the security given by these presents shall be jeopardised, it shall or may be lawful for the said mortgagee, his executors, administrators or assigns, or his or their agents, forthwith to enter the said house and premises, and to sell and dispose of the said goods and effects in manner aforesaid; notwithstanding the time for payment by the said mortgagor of the principal sum of £——and other monies intended to be hereby secured, or any part thereof, shall not have arrived, and to deal with the said goods and apply the proceeds arising from the sale thereof, as if the time for payment of the said sum of £——and other monies intended to be hereby secured, according to the covenant in that behalf hereinafter contained, had elapsed and default had been made in payment thereof. PROVIDED ALWAYS that the said mortgagee, his executors, administrators and assigns, shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts, or to the said trust funds and premises; and further that the said mortgagee, his executors, administrators or assigns, and his or their servants and agents, may, from time to time, whilst any monies shall be due and remain unpaid upon the security of these presents, enter into and upon any house or premises in or upon which the said furniture, goods and effects shall or may be deposited or found and remain in possession thereof in or upon such house or premises for such time as he or they may think fit, or remove the same to other premises at his or their discretion. And also from time to time relinquish possession of the same and afterwards retake possession thereof, without invalidating the security of the powers hereby made and given or herein contained, and for all or any of the purposes aforesaid, to

break open any outer or inner doors, windows, gates, fences, or other obstructions. AND that the said mortgagee, his executors, administrators or assigns, and his and their servants or agents, shall not be deemed or considered a trespasser or trespassers, in consequence of exercising all or any of the powers or trusts hereinbefore granted or contained. And this deed may be pleaded in bar, and shall be deemed, taken and considered, to be a good defence to any action, suit, or other proceeding at law or in equity that may be had or taken against the said mortgagee, his heirs, executors, administrators or assigns for any act done in relation to or by virtue of these presents. AND FURTHER, that notwithstanding that all monies intended to be secured by these presents shall have been paid, the mortgagee shall be entitled to retain possession of these presents. AND the said mortgagor DOTH hereby, for himself, his executors and administrators, covenant with the said mortgagee, his executors, administrators and assigns, that he the said mortgagor, his executors or administrators, shall and will pay or cause to be paid unto the said mortgagee, his executors, administrators or assigns, the monies secured by these presents, with interest for the same respectively, at the times and in the manner aforesaid, without any deduction or abatement, according to the true intent and meaning of these presents. AND LASTLY, the said mortgagor for himself, and his executors, administrators or assigns, doth hereby warrant and defend, and, from time to time and at all times hereafter, shall and will at his and their own costs, warrant and defend the furniture, goods and effects hereby bargained and sold or otherwise assured unto the said mortgagee, his executors, administrators or assigns, against all persons whomsoever.

IN WITNESS, &c.

No. IV.

Bill of sale by way of mortgage of present and future household effects, farming stock and crops, to secure an antecedent debt and future liabilities.

THIS INDENTURE, made the———day of———187 , BETWEEN A.B., of, &c., of the one part, and C.D., of, &c., of the other part. WHEREAS the said A.B. is now indebted to the said C.D. in the sum of £——for goods sold and delivered, and the said C.D. hath demanded payment of or security for the said sum, and the said A.B., not being prepared to pay the same, hath agreed to secure the repayment thereof, and also of any further monies in which the said A.B. may hereafter become indebted to the said C.D., and interest for the same respectively in manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement in

this behalf and in consideration of the premises, and also in consideration of five shillings sterling to the said A.B., now paid by the said C.D., the receipt whereof is hereby acknowledged, He the said A.B. DOTH by these presents grant, bargain, sell and assign unto the said C.D., his executors, administrators and assigns, all and every the household goods and furniture, stock in trade, plate and plated articles, household linen, books, china and other household effects whatsoever, horses, saddles, harness and other accoutrements. AND ALSO all the implements of husbandry, crops of corn and grain, and live and dead stock, and other goods, chattels and effects, now being or which shall hereafter be in, upon or about the messuage or dwelling-house and farm called———occupied by the said A.B., and situate at———aforesaid, and the barns, stables and other outbuildings and lands belonging thereto or held therewith. AND ALL the estate, right, title, interest, claim and demand of the said A.B., of, in, to or upon the said several premises hereby assigned or intended so to be, together with full power and authority (which the said A.B. doth hereby give and grant unto the said C.D., his executors, administrators and assigns), at the costs and charges in all things of the said A.B., his executors or administrators, to use the name or names, and act as the attorney or attornies of the said A.B., his executors or administrators, in or about recovering, receiving, obtaining and giving effectual discharges for the same premises, and from time to time to appoint a substitute or substitutes, with full power for him or them to exercise the same power and authority, including this present authority, and such substitution at pleasure to revoke; TO HAVE, HOLD, take, receive and enjoy the said several premises hereby assigned unto the said C.D., his executors, administrators and assigns absolutely. PROVIDED NEVERTHELESS, that in case the said A.B., his heirs, executors or administrators, shall, on demand made thereof in writing by the said C.D., his executors, administrators or assigns, well and truly pay or cause to be paid unto the said C.D., his executors, administrators or assigns, the said sum of £——and also all other monies (if any) in which the said A.B. shall hereafter become indebted to the said C.D.; and do and shall, in the meantime, until the repayment of the said principal sum of £——and other monies (if any) well and truly pay, or cause to be paid, unto the said C.D., his executors, administrators or assigns, interest thereon at the rate of £—— per centum per annum by equal half yearly payments on the———day of———and the———day of———in every year (the interest for the said other monies being computed from the time, or respective times when the debt thereof shall be incurred), and also a proportionate part of such interest for the fractional period of the half year (if any) which shall elapse between the last half yearly day of payment and the demand, so to be made as aforesaid, of the said principal sum of £——and other monies (if any) as aforesaid, such proportional part to be paid immediately such demand is made, and such several payments aforesaid to be made

without any deduction (except for income tax); then these presents shall be absolutely void, anything hereinbefore contained to the contrary notwithstanding. AND the said A.B. DOTH hereby for himself, his heirs, executors, administrators and assigns, covenant with the said C.D., his executors, administrators and assigns, that he the said A.B., his heirs, executors or administrators, shall and will, on demand made thereof as aforesaid, pay or cause to be paid unto the said C.D., his executors, administrators or assigns, the said sum of £——and also all other monies (if any) in which the said A.B. shall hereafter become indebted to the said C.D., and interest for the same respectively, after the rate and in manner aforesaid, without any deduction (except as aforesaid), and without fraud or further delay. AND it is hereby agreed and declared that after default shall be made by the said A.B., his executors, administrators or assigns, in payment of the said sum of £——and other monies (if any) and interest, or any part thereof respectively, contrary to the tenor and effect of the before mentioned proviso, then and in such case it shall be lawful for the said C.D., his executors, administrators or assigns, peaceably and quietly to receive and take into his and their own possession, and thenceforth to hold and enjoy all and every the premises hereby assigned, and also to seize and take possession of any household goods and furniture, stock in trade, and other goods, chattels and effects, which shall or may from time to time be substituted in lieu of the said household goods and furniture, stock in trade, goods, chattels and effects, or any part thereof, or which shall for the time being be found in or about the messuage or dwelling-house and premises now in the occupation of the said A.B., or which may at any time hereafter during the continuance of this present security be in the occupation of the said A.B., either in the lifetime or after the decease of the said C.D., and also to sell and dispose of the same premises, and every or any part thereof, for such price or prices as can be reasonably had or gotten for the same, and to receive and take and give effectual discharges for the monies to arise by such sale or sales thereof, and to stand possessed of such monies upon the trusts following (that is to say):—UPON TRUST, in the first place, to retain, satisfy and discharge all costs, charges and expences incidental to these presents, and also all costs, charges and expences which the said C.D., his executors, administrators and assigns, may incur or be put unto, in and about the receipt and recovery of the said sum of £——and other monies (if any), and the interest thereof respectively, and in the next place to satisfy, pay, deduct or retain unto the said C.D., his executors, administrators or assigns, the said principal sum of £——and other monies (if any), and the interest thereof respectively, or so much and such part or parts thereof respectively as shall then remain unsatisfied, and from and after full payment and satisfaction of such costs, charges and expenses, and monies and interest as aforesaid, to render to and account for the surplus (if any) of the money arising

from such sale or sales as aforesaid unto the said A.B., his executors, administrators or assigns. AND IT IS HEREBY DECLARED AND AGREED by and between the said parties to these presents, that until default shall happen to be made in payment of the said principal sum of £——and other monies (if any), and interest, contrary to the tenor and effect of the proviso hereinbefore contained, or until default shall be made in payment of the interest of the said principal sum of £——and other monies (if any) or some part or parts thereof, on some one of the days or times hereinbefore appointed for payment thereof, contrary to the same proviso, and also until, in respect of the said interest, demand thereof in writing shall be made by the said C.D., his executors, administrators or assigns, unto the said A.B., his executors or administrators, or left at his or their last place or places of abode in England, requiring the payment of such interest, it shall and may be lawful for the said A.B., his executors or administrators, to hold, make use of and possess the said premises hereby assigned or intended so to be, without any hindrance or disturbance of or by the said C.B., his executors, administrators or assigns. PROVIDED, LASTLY, that the total principal monies to be secured by or ultimately recoverable by virtue of these presents, shall not exceed the sum of £——[*This amount should be stated and an ad valorem stamp in respect thereof impressed.*]

IN WITNESS, &c.

No. V.

Bill of sale by way of mortgage,—more ample form, containing clauses for insurance, &c.

THIS INDENTURE, made the———day of———, 187 , BETWEEN A.B., of, &c., [*the mortgagor,*] of the one part, and C.D., of, &c., [*the mortgagee,*] of the other part. WHEREAS the said C.D. has agreed to lend the said A. B., the sum of £——, upon having the repayment thereof, with interest, secured to him in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £——, to the said C.D., on or before the execution of these presents, paid by the said A. B., (the receipt of which said sum of £——,the said A.B. doth hereby acknowledge), HE the said A.B. DOTH hereby for himself, his heirs, executors and administrators, covenant with the said C.D., his executors, administrators and assigns, that he, the said A.B., his heirs, executors, administrators or assigns, will, on demand, pay to the said C.D., his executors, administrators or assigns, the sum of £——, with interest for the same, after the rate of £——per cent per annum, without any deduction (except for income tax); and will, until such demand shall be made, pay to the said C.D., his executors, administrators or assigns, interest for the said principal sum of £——, or for so much thereof as shall, for the time being,

remain unpaid, at the rate of £——per cent per annum, such interest to be computed from the date of these presents, and to be considered as accruing due from day to day, to be paid on demand, or if no demand shall have been made, then by equal half-yearly payments, on the———day of———and the———day of——— without any deduction, (except for income tax.) AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, the said A.B. DOTH hereby assign unto the said C.D., his executors and administrators, ALL the furniture and other household effects and ornaments, specified in the schedule hereunder written, and all other the furniture and other household effects and ornaments which now are, or during the continuance of this security, may be, in, upon, or about the dwelling-house of the said A.B., being No.—, ———Street aforesaid, AND ALL the estate and interest of the said A.B., in, to or out of the same premises. TO HAVE AND TO HOLD the said premises, unto and to the use of the said C.D., his executors, administrators and assigns, subject, nevertheless, to the proviso for redemption hereinafter contained, (that is to say), PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that if the said A.B., his heirs, executors, administrators or assigns, do and shall, immediately on demand being made by notice in writing to that effect, to be delivered to him, or left at his usual place of residence or abode, pay unto the said C.D., his executors, administrators or assigns, the sum of £——, together with interest thereon, at the rate of £—— per cent per annum, up to the time of such demand, without any deduction, (except for income tax), and shall in the meantime, and until the said sum of £—— shall have become payable under this proviso, pay, without deduction, (except for income tax), interest on so much of such last mentioned sum, as shall, for the time being, remain unpaid, after the rate of £——per cent per annum), on demand, or if no demand shall have been made, by equal half-yearly payments on the———day of———and the———day of ———until such principal sum shall be paid; then the said C.D., his executors, administrators or assigns, shall, at the request and costs of the said A.B., his executors, administrators or assigns, reassign the said premises hereby assigned, unto the said A.B., his executors and administrators, and also cause a memorandum of satisfaction of this security, to be written on these presents. PROVIDED ALSO AND IT IS HEREBY FURTHER DECLARED, that until such default in payment of mortgage money or interest as aforesaid, it shall be lawful for the said A.B., his executors or administrators, to retain possession of the premises hereby assigned. AND the said A.B., doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the said C.D., his executors, administrators and assigns, that so long as any money shall remain owing on the security of these presents, he the said A.B., his executors, administrators or assigns, will not remove any of the premises comprised in this security from the said dwelling-house, without the previous consent in writing of the said C.D., his

executors, administrators or assigns, except for necessary repairs; and will replace any articles damaged or worn out, with others of equal value, at least. AND WILL, at all times, keep the premises hereby assigned in good repair. AND THAT, the said C.D., his executors, administrators or assigns, and his and their agents, may, at all reasonable times, so long as any money shall remain owing on this security, enter into the said dwelling-house, to view the condition of the premises, and to take inventories and schedules of the same, and of any want of repair or dilapidation, to give to, or leave for the said A.B., his executors, administrators or assigns, notice in writing, and upon such notice being given or left, the matter complained of, shall be forthwith amended by the said A.B., his executors, administrators or assigns. AND FURTHER, that the said A.B., his executors, administrators or assigns, will, during the continuance of this security, keep the premises and all other articles, for the time being, subject thereto, insured from damage by fire, in the sum of £——, at the least, and will, on demand, produce the receipt for the current year's premium for such insurance. AND will expend all monies received, by virtue of such insurance, in replacing or restoring the articles destroyed or damaged. AND THAT, if default shall be made in keeping the said premises so insured, it shall be lawful for the said C.D., his executors, administrators or assigns, to insure, and keep insured, the said premises, and to pay such sums of money as may be necessary for that purpose, and that the said A.B., his executors, administrators or assigns, will repay to the said C.D., his executors, administrators or assigns, all monies so expended for that purpose by him or them, with interest thereon, at the rate of £—— per cent per annum, from the time of the same respectively having been advanced or paid, and that, until such repayment, the same shall be a charge upon the said premises hereby assigned. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that immediately on such default in payment of principal money or interest as aforesaid, it shall be lawful for the said C.D., his executors, administrators or assigns, to enter into possession of the premises hereby assigned, and to sell the same or any part or parts thereof, either by public auction or private contract, and to give effectual receipts for any purchase money, and to do all other acts and things for completing any sale which the said C.D., his executors, administrators or assigns may think fit. AND IT IS HEREBY DECLARED, that, the said C.D., his executors, administrators or assigns, shall apply the purchase money of the premises sold, in the first place, in defraying the expenses of, and incidental to, the said sale, and then in or towards satisfaction of the monies, for the time being, due on this security, and shall pay any surplus to the said A.B., his executors, administrators or assigns. PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, that, upon any sale, purporting to be made in pursuance of these presents, no purchaser shall be bound to inquire, whether such default, as hereinbefore is required, has been made, or whether any

money is due on this security, or, in anywise, to ascertain the propriety or regularity of such sale, or be affected by express notice that any such sale is irregular or improper. PROVIDED ALSO, AND IT IS HEREBY FURTHER DECLARED, that the said C.D., his executors, administrators or assigns, shall not be answerable or responsible, under or by means of the trusts or provisions of these presents, for any other monies than he or they shall actually receive, nor for any losses which may arise to the said trust monies, other than by or through his or their wilful default or neglect. AND the said A. B., doth hereby, for himself, his heirs, executors and administrators, covenant with the said C.D., his executors, administrators and assigns, THAT he, the said A.B., has good right to assign the premises hereby assigned, AND THAT the same shall be quietly enjoyed by the said C.D., his executors, administrators and assigns, in manner aforesaid: AND THAT the same are free from any charge, incumbrance, claim or demand whatsoever: AND THAT he the said A.B., his executors and administrators, and every other person claiming any interest in the said premises or any of them will, at all times hereafter, (at the cost of the said A.B., his executors, administrators or assigns, whilst any equity of redemption shall be subsisting, and afterwards of the person or persons requiring the same,) execute and do every such lawful assurance and thing for further or better assuring all or any of the said premises, unto the said C.D., his executors, administrators and assigns, and enabling him and them to obtain possession of, and quietly enjoy the same, as by him or them shall be reasonably required.

IN WITNESS, &c.

The Schedule above referred to.

No. VI.

Affidavit of execution of bill of sale.

IN THE QUEEN'S BENCH.

I W. X., of——in the county of——Solicitor, make oath and say:

1. That the paper writing, hereunto annexed, marked A., is a true copy of a bill of sale, and of every schedule or inventory thereto annexed, or therein referred to, and of every attestation of the execution thereof, and that the said bill of sale was made and given on the day it bears date, being the———day of———in the year of our Lord One thousand eight hundred and———and that I was present and did see A. B. [*the mortgagor*] in the said bill of sale mentioned, and whose name is signed thereto, sign and execute the same on the said———day of———in the year aforesaid, and that the said A.B. resides at———in the county of———and is a———

2. And I further say that the name W. X. set and subscribed as the witness attesting the due execution thereof, is of the proper handwriting of me this deponent, and that I reside at———and am a Solicitor.

Sworn at——this——day of——One thousand eight hundred and——

Before me,

No. VII.

Affidavit on renewing registration of bill of sale.

IN THE QUEEN'S BENCH.

I, G.H., of———in the county of———make oath and say:

That a bill of sale, bearing date the———day of———One thousand eight hundred and———and made between A.B., of &c., of the one part, and C.D., of, &c., of the other part, and a copy of which said bill of sale was filed in this Honorable Court, on the———day of———One thousand eight hundred and———, is still a subsisting security.

Sworn at, &c.

No. VIII.

Affidavit of second re-registration of bill of sale.

IN THE QUEEN'S BENCH.

I G.H., of———, in the county of———, make oath and say:

That a bill of sale, bearing date the———day of———One thousand eight hundred and———, and made between, *&c.* [*Names, residences, and descriptions of the parties,*] and a copy of which said bill of sale, was filed in this Honorable Court on the———day of———One thousand eight hundred and———, and which was re-registered under the "Bills of Sale Act, 1866," on the———day of———One thousand eight hundred and———is still a subsisting security.

Sworn at, &c.

No. IX.

Consent to order to enter satisfaction.

IN THE QUEEN'S BENCH.

I hereby consent to an order, that a memorandum of satisfaction be written upon the copy of the indenture or bill of sale of personal chattels, given for securing the sum of £——, bearing date the———day of———One thousand eight hundred and———, made between A.B., of, &c., of the one part, and me C.D., of, &c., of the other part, and filed on the———day of———, One thousand eight hundred and———, the debt for which such bill of sale was given as a security having been satisfied.

Dated the———day of———One thousand eight hundred and ———.

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